FOUR LECTURES
ON
BILLS OF EXCHANGE.

BY

A K LOYD, Q.C

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ON

BILLS OF EXCHANGE

INTRODUCTORY TO

The Codifying Act of 1882, 45 and 46 Vict., c. 61

(With the Text of the Act).

BY

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NOTE.

These Lectures were, at the invitation of the Council, delivered before the Institute of Bankers in London and in Manchester between the dates of November 21st and December 14th, 1894, inclusive. They were designed to facilitate the study of the Codifying Bills of Exchange Act of 1882, and, with the approval of the Council of the Institute, are now published together. The text of the Act of Parliament is appended, with notes showing where any of its sections or sub-sections are referred to in the Lectures.

BILLS OF EXCHANGE.

LECTURE I.

OF THE ORIGIN AND USES OF BILLS AND THE GENERAL PRINCIPLES EXPLAINING THE CODIFYING ACT OF 1882.

I HAVE been invited by the Institute of Bankers to endeavour to place before you, within the compass of four lectures, such observations on Bills of Exchange Law as may seem likely to be of service to junior bank officials. Bills of Exchange being a large subject, and selection being necessary, I have been guided in the choice of topics and the order of treating them, by the fact that you gentlemen are in daily contact with the instruments which are the subject of our enquiries. Let us avoid overwhelming ourselves at the outset with nomenclature and definition. We shall indeed, in due time, examine the essentials of a bill, a drawing, an acceptance or an indorsement, but we may at least approach our subject in what I consider the natural order, and by the natural order I mean that in which we make the acquaintance and gradually acquire an intimate knowledge of the persons and things around us. We talk about them freely long before we make any minute study of their character. In fact, it is not till we have gradually, perhaps accidentally, acquired a good deal of general and a good deal of particular knowledge of such persons or things that any minute study of them in detail becomes interesting.

Importance and use of Bills of Exchange.

Well, you all know that bills are inland and foreign. You know that a bill is drawn by the drawer upon some one with whom he has credit or value called the drawee, and if he accepts, the acceptor, in favour of bearer or a specified payee, and that when that specified payee indorses, he is called the indorser, and the person to whom he indorses, the indorsee.

I would advise every student to have in his mind some concrete case and (if he finds it of assistance) to put it down in a diagram

form. You can make diagrams for yourselves, but I will suggest a form and symbols which may be useful.

Diagram I.

Rio.	London.
A —	B +
C +	D —

Let A represent an exporter from Rio, and let B be the importer in London. As A has parted with his goods and is not yet paid, put — to represent creditor. As B has had the goods sent to him and has not yet paid for them, let him be + for debtor. Then suppose the converse case of D exporting goods, say from London, to C the purchaser in Rio, D and C will be minus and plus respectively, and suppose the amount in each case to be £200.

Now I am purposely putting a case primitive in its simplicity because this is precisely the sort of situation which probably gave rise to bills of exchange. Here the trouble, risk, and expense of sending specie are avoided if Rio debtor can pay Rio creditor, and London debtor can pay London creditor.

(a) Saving of trouble, risk, and expense of sending specie.

This result can be produced by a bill transaction in either of two ways: (1) Rio creditor A may draw on London debtor B in his own—A's—favour, and, in exchange for value, indorse and hand the bill to Rio debtor C, who can then indorse and remit to London creditor D, who will obtain from the London debtor the amount for which it was drawn. Or (2) London debtor B may buy in London a bill drawn by London creditor D on a Rio debtor C in his own—B's—favour, and then indorse and remit it to Rio creditor A, who will then recover the amount from Rio debtor C.

That elementary diagram may serve a useful turn in reducing complicated transactions to their simple constituents.

1. You will see how the business of bill-broking would naturally arise.

2. You will also see that when, as between two places, more goods have been exported from one of them than imported to it, there will be more creditors—with bills drawn on the other place to sell—than debtors to that other place anxious to buy.

3. Bills on that other place will be abundant and cheap, and the tendency will be for such of them as are not disposed of, to be replaced by money remittances from that other place; in other words, the exchange will be in favour of the place where exports are in excess of its imports.

4. You will see that the limit of cheapness of those bills will be reached when the amount taken off their value by their abundance makes the would-be sellers of them willing to put up with the trouble, risk and expense of specie remittance rather than submit to further deduction.

But as the transactions are generally modified by dealings with other places, it may be well to supplement that diagram by another.

DIAGRAM II.

RIO.		LONDON.
A —		B +
C +		D —
LISBON.		PARIS.
E — F +		— G +

Suppose C and D instead of having dealt with each other had had dealings respectively with Lisbon and Paris. The E — will be a creditor at Lisbon of C, and one F of Lisbon we will suppose has bought from G of Paris, and let the same G of Paris be the party who imported goods from D of London.

Now, here as before, A draws upon B of London and sends the first of the set forward for acceptance. The second, with a notice on it of where the accepted first will be found, he indorses to C, who, instead of remitting it directly on to London, indorses and remits to E of Lisbon. E sells the bill to F of Lisbon, who remits to his creditor G of Paris, who remits to his creditor D of London, who probably lodges it with his bankers for collection, and the bankers present it for the acceptance and for payment at maturity.

(*b*) Perfect mechanism for credit transactions.

Apart from saving the trouble and risk of sending specie, there is the perfect mechanism which bills afford for carrying out credit transactions, and for the expansion and contraction of credit in different branches of production and trade. A manufacturer has

to give credit to retailers, because they must have time to sell. Now the manufacturer must make large payments in weekly wages and otherwise, and, by drawing on his purchaser for a sum which will cover the price of the goods, including the interest on the delay allowed, he can, by taking his bill to those in immediate need of bills for remittance or to those with surplus funds to utilise, obtain the ready money wanted to carry on his business, without curtailing the credit which is necessary for the retail dealer to whom he has sold. Again the expansion and contraction of credit with the rise and fall of the demand for commodities in particular trades is effected by means of bills of exchange. "When the demand for silks increases," says Ricardo, "and that "for cloth diminishes, the clothier does not remove with his "capital to the silk trade, but he dismisses some of his workmen "and he discontinues his demand for loans from bankers and "moneyed men; while the case of the silk manufacturer is the "reverse; he wishes to employ more workmen, and thus his "motive for borrowing is increased. He borrows more, and thus "capital is transferred from one employment to another, without "the necessity of a manufacturer discontinuing his usual occu-"pation." ("Political Economy," p. 84, cited by Gilbart; History, &c., I, 165). The transfer, says Gilbart, is chiefly effected by bills of exchange. "The manufacturer, who has sold a less quantity of commodities, will have fewer bills for his banker to discount; the other, having sold a greater quantity of commodities, has more bills to discount. The banker's capital, which he employs chiefly in the discount of bills, is thus easily transferred from one branch of manufacture to another, in exact proportion to the circumstances of the respective parties." Gilbart also mentions an advantage of bills that has its amusing side. Supposing a debtor is too good a customer to lose, but still is a bad hand at paying his debts, if the creditor can induce such a customer to accept a bill or make a promissory note in his favour for the amount, with a comfortable credit and no appearance of undue haste, the creditor can get his money the very next day by negotiating that note or bill away for value to a stranger, or discounting it with his banker, who will

(c) The expansion and contraction of credit adapted to the varying demand for commodities in particular trades.

(d) Punctual payment ensured from solvent but dilatory customer.

have no scruple in getting the money at maturity; while the original creditor can still remain the obedient servant of the valued but dilatory customer.

Besides thus fixing the date for payment of debts, bills are useful in fixing the amount, and dispensing with the necessity of proving the sale and delivery of all the goods for which the bill is drawn, as no consideration for the bill need be proved. Moreover a stringent and speedy method of recovering the amount was provided by the Act known as Keating's Act in 1855, a procedure which has since with great advantage been extended to all money demands of ascertained amount, under Order XIV of the Rules of the Supreme Court. Bills are also an easy form of giving a guarantee, because, as we shall see a little later, the drawer prior to acceptance, and after acceptance, the acceptor, is the principal debtor; and the drawer is surety for the acceptor; and all indorsers are sureties for the acceptor, the drawer, and all prior indorsers. So that any person who puts his name to the bill in order to further its negotiation becomes a surety for those who are already liable thereon.

(*e*) Amount of debts fixed.
(*f*) Consideration presumed.
(*g*) Summary procedure.
(*h*) An easy form of guarantee.

In this country, however, bills have been encouraged not only on the ground of Commercial convenience, but as supplying the place of the precious metals and so operating in aid of the currency. "At the first introduction of bills of exchange," wrote the late Sir John Byles, "the English Courts of Law "regarded them with a jealous and evil eye, allowing them only "between Merchants, but their obvious advantages soon compelled "the Judges to sanction their use by all persons, and of late years "the policy of the Bench has been industriously to remove every "impediment and to add all possible facilities to those wheels "of the vast commercial system. The advantage of a bill of "exchange, in reducing a debt to a certainty, curtailing the "evidence necessary to enforce payment, and affording the means "of procuring ready money by discount, often induced creditors to "draw a bill for the sake of acceptance though there might be no "intention of transferring the debt." This led to a shorter way of effecting the same purpose by means of a promissory note.

(*i*) release of specie from currency.

"Promissory notes soon circulated like Bills of Exchange and "became as common as Bills themselves." Lord Chief Justice Holt was of opinion, however, that no action could be maintained on the note, and that it was merely evidence of a debt. But, by the 3 and 4 Anne, c. 9, promissory notes were made assignable and indorsable like inland bills of exchange and the holder was empowered to sue upon the instrument itself, and not merely upon the transaction out of which it arose. Foreign notes were afterwards held by the Court of King's Bench to be within the Act, which the Judges said "was made for the advancement of "trade and ought therefore to receive a liberal interpretation." (Milne *v.* Graham, 1 B and C 192.)

"Notes for small sums," adds Sir J. Byles, "payable to bearer "on demand were found to answer most purposes of the ordinary "circulating medium and have at length in all civilised countries "supplanted a great portion of the gold and silver previously in "circulation." It was however found necessary to place the issue of negotiable notes for small sums under legislative restrictions. You may notice, at this stage, *three points* in regard to promissory notes, viz. :—that the maker of a promissory note is in the position of an acceptor of a bill of exchange, with this difference that he volunteers his promise to pay, instead of assenting to the order of a drawer calling upon him to do so. The second point is this, that you now see how Bankers' promissory notes to bearer on demand, or shortly "Bank Notes," originated, and how legislative restrictions upon their issue came to form part of the legislation of the day for regulating the currency. The third point is, that the restriction on the issue of Bankers' promissory notes to bearer on demand gave a stimulus to the use of cheques, a matter which we shall return to hereafter.

So much so that restriction on issue of bank promissory notes to bearer on demand found necessary.

There is no need to dwell at undue length upon the amount of duty done in lieu of the circulating medium by paper money, in different forms. "All payments for our immense exports and "imports, almost every remittance to and from every quarter "of the world, nearly every payment of large amount between "distant places in the kingdom and a large proportion of payments

Extent to which paper replaces money in currency.

"in the same place are made through the intervention of bills, not "to mention the amount of common promissory notes at long and "short dates, the notes of the Bank of England and Country banks "and the universal and daily increasing use of cheques." Those words written by Sir J. Byles, in 1829, might have been written to-day with even greater force, considering the extension of manufactures, commerce and banking within the last 60 years. Evidence before a select committee of the House of Commons in 1858, showed that in the last seven weeks of 1857, nearly £5,000,000 worth of bills, discounted for brokers, matured in the hands of one of our great banks alone.

Coming to the present day, returns of the paid clearing at the London Clearing House show that the amount of bills, cheques, etc. passed through the House in 1890, had reached the enormous figure of £7,801,048,000. In 1893 the figure was £6,478,013,000, a fluctuation of £3,549,000 less than passed through in 1892, and a falling off of £1,323,035,000 since 1890, partly due to low prices.

Growth of legal decisions and statute law on Bills, etc.

Such, then, being the importance and utility of bills of exchange and such the favour with which their use was consequently encouraged in our courts, there had grown up around these instruments a mass of legal decisions, beginning to appear in our reports from the time of James I, and increasing in volume and complexity with the extension of manufactures and commerce to our own time. There were some 2,500 of these reported decisions and 17 statutory enactments, when, shortly before 1882, His Honour Judge Chalmers, then at the bar, collected the substance of all those decisions, and, by the light of the best English, French, and American commentaries on the subject, arranged the whole in the form of a digest. This digest naturally attracted the attention of the banking, commercial and legal world, and he was instructed by the Institute of Bankers and the Associated Chambers of Commerce to prepare a bill. Now this bill before being introduced was submitted to a searching criticism by the Institute of Bankers, in order that, in those parts of the proposed code which dealt with points not covered by judicial authority, the law should be settled in strict conformity with the business usage of the banking and

commercial community. Sir John Lubbock introduced the bill in the House of Commons, and it was referred to a select committee of merchants, bankers and lawyers. With the aid of distinguished Scotch commercial lawyers, it was found possible to extend the bill to Scotland. In the House of Lords it was again submitted to the ordeal of a select committee, and finally became law as the Bills of Exchange Act, 1882. I have mentioned those particulars because (1) they will recur to your minds and explain, and by explaining, impress upon your memory, certain points where previous doubts as to banking or mercantile usage have received legislative solution, and where Scotch law and English law have, by concession on one side or the other, been brought into uniformity, or special provision made for their divergence; and (2) because I want to impress upon you the value of that Act and the scrupulous care brought to bear upon its preparation, its discussion and its final embodiment as the law of the land.

The Act of 1882.

But, as literature, the Act is naturally somewhat concentrated reading. It was said of some of the creeds, in which the theologians of old summed up their argumental victories, that each phrase was the tomb of a controversy. And it must be conceded that the 100 sections into which all those cases and statutory provisions have been reduced would require a close and sustained effort for their mastery if the Act, pure and simple, were placed in the hands of a beginner. There are, however, certain underlying principles which govern groups of provisions in the Act; and a right understanding of these will enable us to find our way about the Act with such increased facility hereafter as will, I think, repay the time devoted to their inspection at the outset.

Advantage of studying principles.

In the first place it is well, for anyone wishing to get his legal bearings true on the subject, to consider carefully what is meant by Negotiability. If one man owes another money, the creditor, of course, can authorise a third party, to whom he is in debt, to call for it, and may instruct the debtor to pay the debt to that third party when he calls. If the debtor chooses to do so, well and good. But how if the debtor refuses? Neither the creditor nor the third party can compel the debtor, in the absence of agreement, to accept

Negotiability.

the third party in lieu of the original creditor, unless under certain equitable and statutory exceptions.

Suppose again that a man agreed with you that, if you would sell and deliver your horse to him at some distant place, he would pay the price to a creditor of yours there to whom you were desirous of sending the money. You duly deliver your horse. He refuses to pay at all, or insists on remitting the amount to you. You have your remedy by action upon the contract which he made with you. But your creditor has no remedy against him, because there is no privity or legal relationship between them. And you could not, formerly, assign your right of action to the creditor; because the law deemed it contrary to good policy that if a man, having a right to bring an action, was disinclined to enforce his rights, he should be allowed to sell or transfer his chance of a verdict to a more enterprising or pugnacious person. A chattel was of course assignable. A claim of this kind was not a chattel, but it was a matter or thing or (in Norman French) a "chose" requiring an action to reduce it to tangible form, in other words, "A chose in action," and the rule of law was that a chose in action was not assignable.

The Courts of Equity had gradually mitigated the harshness of this rule by admitting the transfer of debts in certain circumstances, and when in 1873 law and equity were fused, it was expressly enacted that an absolute assignment (not a mere charge) in writing, signed by the assignor, of a debt or legal chose in action should (subject to all equities formerly entitled to priority over the rights of the assignee) pass and transfer to the assignee the legal right to the debt or chose in action and all remedies for the same, from the time that express notice in writing of the assignment is given to the debtor. Now there we have a useful Chancery Lane sort of transferability; subject to formalities as to writing, signature of assignor, and written notice of assignment given to the debtor.

But the assignability here provided falls very far short of the needs of the world-wide commerce in which bills of exchange play their part, passing through numerous hands and discharging numerous obligations among parties at great distances and generally

strangers to one another. To say nothing of the written notice, to the debtor, of each assignment, we find that even when the assignee has got his written document and has ascertained that the debtor has been duly notified in writing, there is that awkward limitation on his rights that they are subject to all the equities or prior claims which attached to the debt before it was assigned to him. In other words his assignor can give him no better title than he had himself, and therefore there is hanging over his assignment the chance of someone who has been defrauded or unjustly treated claiming to rip up the whole transaction, however honestly the assignee has taken over the debt, and however ample the value which he has given for his supposed assignment.

Now, as might be expected, the mercantile world had devised a much more workable method of assigning debts than the methods thus tardily grafted by Equity, and afterwards by Statute upon the Old Common Law. What was needed for commercial purposes was (1) Complete transferability of the debt, with the least possible formality at the time of transfer ; (2) the certainty on the part of any business man (so long as he combined honesty and common precaution with business despatch), that when he took a written assignment of a debt in exchange for value, that assignment was valid against all comers.

These two essentials it would appear must have preceded, in point of time, two others which are now enumerated along with them as going to complete the modern definitions of negotiability. It is further laid down as part of the connotation of negotiability that the transferee is empowered to sue in his own name and that the transfer is presumed to have been for consideration. But inasmuch as the law of negotiability had its origin in mercantile usage, the two latter qualities seem to have been added in aid of the two former, when the Lex Mercatoria, becoming gradually recognised as part of the law of England, received enforcement in the legal tribunals instead of depending as it must have done at first upon the sanctions of commercial opinion. The negotiability of bills of exchange has received from our Courts every support and encouragement for reasons to which we have already referred,

and the recognition of a right in the transferee to sue in his own name and the presumption of value in his favour were probably a part of that support and encouragement. At all events I shall ask you to bear in mind as the two principal ingredients in negotiability (1) transferability, either by endorsement and delivery or by mere delivery (according as the document purports to be payable to order or to bearer), and (2) an indefeasible title got by honest acquisition for value. The impairing of one or other of these qualities will come before you at two later stages of our inquiry, viz., when we are considering negotiation, in the sense of transfer, and the effect of taking an over-due bill, and again when, in discussing crossed cheques, we consider the meaning and effect of the words "not negotiable."

Its two principal ingredients.

The sole object of the Courts in upholding negotiability is to facilitate the diligent and honest transaction of business. But wherever fraud, injustice or hardship in connection with a bill can be thwarted or redressed without injury to the honest and diligent holder for value, the Courts will give effect to all those principles of justice which regulate ordinary contracts. It is this struggle between the maintenance of negotiability, in favour of the holder in due course, and the endeavour to give effect to all just claims and defences between the immediate parties concerned, that affords a clue to most of the learning on consideration, holder, holder for value, and holder in due course. With regard to holder, holder for value, holder in due course, you of course understand that there can only be one holder (whether a person or body of persons) at the same time, and that the proportion of cases is small in which it becomes material to enquire the circumstances under which the holder acquired the bill. "Holder" suffices for all those provisions in which the possession of certain qualities does not come into question, and the special terms holder for value, holder in due course, are only wanted for those provisions where certain rights are only conceded in the event of a greater or less number of qualities combining in the same individual. Now in all those provisions which deal with the ordinary routine transactions on a

Consideration.

Holder.

bill you have nothing whatever to do with holder for value or holder in due course.

These distinctions arise when something has gone wrong about the bill; when some one is sued who got no value, or when some party, other than the holder, claims to be the true owner of the bill or to have been wronged by its issue or transfer. In some of these cases the law maintains the paramount claims of the holder, in spite of hardship to one of the immediate parties to some irregularity. In others it allows the hardship to be redressed.

Immediate and remote parties.

This brings us to the distinction between immediate and remote parties to a bill. The immediate parties are those between whom the issue, or any particular transfer, of the bill takes place. When a *further* transfer has taken place, the party to whom it is made, and any subsequent transferee, are remote parties with regard to any issuer or transferor prior to such further transfer. But in such further transfers if any transferee gets the bill for nothing, *i.e.* without value (*e.g.*, if he is the mere agent for collection, or a mere donee to whom the bill is given as a present) he is identified with the party who so transferred it to him without value. So that any objection whether on the ground of want of value received by the party sued, or of defective title in the transferor, is available against a person to whom such transferor has passed it for collection or otherwise transferred it without value. Now whether the holder need only be a holder for value, in which case the presumption is in his favour, or whether he must take upon himself to prove that he is a holder in due course, depends upon whether the person whom he is claiming against relies upon mere absence of consideration or says he has been fraudulently, forcibly or illegally induced to part with the bill. The mere fact of having given value formerly put a holder in a stronger position in a court of law than it does now because it affected the burthen of proof in these disputes. Formerly, when the party sued set up and established that the bill had been fraudulently or illegally obtained or negotiated, the holder had to prove that he, or some one through whom he claimed, gave substantial value for the bill after the fraud, &c., was committed. And as soon as he proved

Holder for value.

he was a holder for value, it was presumed in his favour that he had no notice of the fraud, &c. But a recent case of Tatam *v.* Haslar has decided that the Act of 1882, section 30 (2), has cast on him, as soon as his title is impeached for fraud, duress or illegality, the burthen of proving that he, or some one through whom he claims, gave value for the bill since the fraud, &c., and moreover that such value was honestly given.

Tatam *v.* Haslar.

Before reading you the definition of holder in due course, however, it may be well to remind you that the variety of circumstances which might create suspicion of the soundness of the transferor's title is almost infinite, but two circumstances have been laid hold of and made equivalent to notice, or, at least, deemed sufficient to put the holder on the alert and deprive him of any legal sympathy if another claimant to the bill or its contents should appear. The circumstances in question exist (1) if the bill is not complete and regular on the face of it, and (2) if the bill is overdue. Of course, if a bill is incomplete, *e.g.*, a blank acceptance, or has been torn into pieces as if to cancel it, when the holder takes it, there is the obvious question, Why is it going about in this condition? If it is overdue, the natural enquiry is, Why has not the bill been presented for payment? or, if presented for payment, why not paid? or, if paid, what business has the transferor to negotiate the bill? So, that being understood, we will now see the definition of holder in due course in section 29 (1).

Holder in due course S. 29 (1).

"A holder in due course is a holder who has taken a bill "complete and regular on the face of it, under the following "conditions, viz.:—"

"(*a*) That he became the holder of it before it was overdue, "and without notice that it had been previously dishonoured if "such was the fact. (*a*)

"(*b*) That he took the bill in good faith and for value, and "that at the time the bill was negotiated to him he had no notice "of any defect in the title of the person who negotiated it." (*b*)

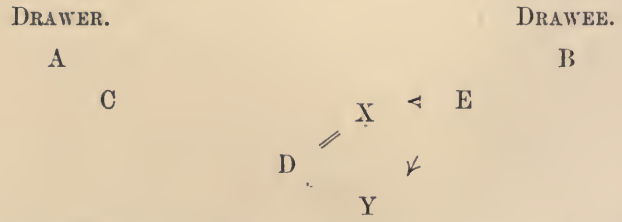
I think the best way of bringing before you what is the combined effect of these sections as to absence of consideration,

fraud, illegality, holder for value, and the holder in due course, will be by a diagram.

Let A be the drawer, B the drawee, and let the bill circulate from A to C, C to D, D to E; E presents it to B for acceptance and it is dishonoured; E thereupon gives notice of dishonour to all the parties whose names are on the bill, right back to the drawer, and has his remedy against any or all of them.

Now, suppose we start two bills and make them follow the same course from A to C and C to D, and, at this point, make them diverge from D through two different channels X and Y, passing to the former, *i.e.*, X, without consideration, and to the latter, Y, under circumstances amounting to a fraud on the part of Y. Let X and Y each indorse and deliver the respective bills to E for value, and let E present them to B, who dishonours them by non-acceptance.

The diagram will then stand thus—



Then suppose that E having sent notice of dishonour to all the parties, including X and Y, finds X not worth powder and shot, and is unable to find Y at all. He resolves to sue D. D objects to pay on either bill, because he received no value from X for the one, and he was defrauded by Y of the other. If D can manage to show that E gave no value to X he will succeed on that bill; but if he cannot prove this, value being presumed, E will succeed;

and it is immaterial whether E knew or did not know that X received it without value from D. A simple V therefore will serve as a symbol of the value which is sufficient to entitle E to succeed against D or any of the prior parties on the bill.

Upon the bill which came to E through Y, however, different considerations arise. Here D's defence is fraud, which is a "defect of title" in Y. Accordingly upon proof by D of the fraud, E is put to prove not only that he gave value to Y for the bill, but that he did so in good faith and without suspicion of the fraud, so that we must place a different symbol of some sort to represent the value *in good faith* passing between E and Y in order to entitle E to recover against D through Y's indorsement.

Let us now suppose that X, on receiving notice of dishonour, took up the bill from E. What would be the position of X? He could not recover against D because (as between immediate parties) want of consideration is an answer to the claim. But X can sue either C or A, and it is no defence for either of them to say that D passed the bill to X without value. It would be a defence for C to set up that he, C, received no value because X being a mere donee is identified with D for the purpose of any defence available against D. But it would be no defence for A to set up that he, A, received no value from C, unless he could go further and show that C received no value from D. If D gave value to C, then X, as D's donee, is entitled to recover from anyone whom D could have successfully sued.

Suppose once more that X were suing A, and A set up that he had been defrauded of the bill by C, then, upon proof of that fraud, X would have to show not only that D gave value, after the fraud, to C, but that such value was given in good faith, which means honestly, and therefore (as decided in Tatam *v.* Haslar) without notice or suspicion of the fraud.

If Y, upon receiving notice of dishonour, took up the bill from E, and sought to recover against prior parties, the defective title resulting from his fraud would be an answer to any claim by him, not only against the immediate party, D, whom he defrauded, but also against either of the prior parties C or A. But there would

be this nice distinction to be borne in mind: if the fraud of Y was a downright larceny, or an obtaining of the bill without any intention on the part of D to part with the property in it to Y, no further proof beyond the fraud itself would be necessary to defeat Y's claim. But if D had intended to negotiate the bill to Y and the fraud consisted in deceitfully inducing D so to negotiate it, then, if A or C were being sued by Y, they would have to prove, not only the fraud, but that D had repudiated the negotiation on the ground of its having been induced by the fraud.

Holder for value, besides his importance under that portion of the Act which is devoted to consideration, claims attention under section 31 (4), which entitles him, if a bill, payable to his transferor's order, has been transferred to him without indorsement, to compel the indorsement of his transferor. And he re-appears in section 58 (3) which provides that the transferor by delivery of a bill payable to bearer, while incurring no liability on the bill, nevertheless warrants to his immediate transferee, being a holder for value, three matters, on failure of which the transferee can recover damages.

Accommodation bills and accommodation parties.

An accommodation party is defined in section 28 (1) as a person who has signed a bill as drawer, acceptor, or indorser without receiving value therefor, and for the purpose of lending his name to some other person.

The marginal note to that section leads one to expect a definition of an "accommodation bill" as well as of an accommodation party. But neither in that section nor in any other part of the Act is there any definition of an accommodation bill, though by section 59 (3) we are told that "where an accommodation bill is paid in due course by the party accommodated the bill is discharged." What then is an accommodation bill? I have looked in my library, and the earliest copy of "Byles on Bills" I can find is that which the writer presented to Baron Martin in 1847, and bears the inscription "To Samuel Martin, Esq., Q.C., from the Author." It is the fifth edition, and at page 94 there is this definition of an accommodation bill:—

"An accommodation bill is a bill to which the acceptor, drawer, "or indorser, as the case may be, has put his name without "consideration for the purpose of benefiting or accommodating "some other party *who is to provide for the bill when due*," and that definition remained in all the succeeding seven or eight editions which were revised by that most learned and accurate writer down to the time of his death, and all its parts are preserved in later editions, together with every other line which has not been superseded or altered by judicial decision or legislative enactment. It is much to be regretted that as section 59 (3) deals with the discharge of an accommodation bill, no definition of accommodation bill is given. I do not understand the definition in Byles to mean that if the bill, in its inception, is an ordinary bill for value as between the original parties, whether drawer and payee, or drawer and acceptor, any gratuitous indorsement, say the fifth or the tenth in a series, would render it an accommodation bill. I understand Byles's definition to refer to the inception of the bill, because he speaks of the accommodated party being the one bound to provide for the bill when due. I take it to mean that if, as between the original parties to the bill, that one, who would *primâ facie* be principal, is in fact the surety, whether he be drawer, acceptor, or indorser, that bill is an accommodation bill. No doubt if the acceptor accepts for the accommodation of the drawer, that is an accommodation bill, and probably the most common sort of accommodation bill; but it does not follow, that no bill is an accommodation bill unless it is one to which an acceptor has become a party for the accommodation of the drawer. Suppose for instance there was no acceptor at all. Suppose the drawer drew for the accommodation of the payee, and the bill after half a dozen indorsements was dishonoured by non-acceptance. This according to Mr. Justice Byles's definition would be an accommodation bill, and this bill could, under section 59 (3), be discharged by payment in due course by the payee, who was the party accommodated, though, *primâ facie*, the drawer would be the principal debtor on that bill. Suppose again that to accommodate the person who, on the face of the bill, figured as the first indorsee

the person who appeared as payee and first indorser had drawn in a fictitious name upon a fictitious drawee, and, money being raised upon the bill in that form, it was negotiated and dishonoured by non-acceptance. Here again there is no acceptor on the face of the bill, the drawer also turns out a myth, and the first real responsible party, the one who would *primâ facie* be the principal debtor, viz., the payee and first indorser, is in reality a surety only for the second indorser. Here again, within the definition in "Byles on Bills," this is an accommodation bill, by reason of the indorser, who would *primâ facie* be the principal debtor, being in fact the surety.

Proposed definition of accommodation bill.

In the absence therefore of any definition in the Codifying Act, or of any express judicial definition, the best solution I can suggest to you is to say that where, as between the original parties to the bill, that party (whether drawer, acceptor, or indorser), who would, if he had received value, have been the principal debtor, is merely the surety, and the party who would, if he had given value, have been surety, is in fact the principal "who is to provide for "the bill when due," that bill is an accommodation bill, and, if paid in due course by the accommodated party, is discharged under section 59 (3).

Capacity and Authority.

Besides cases where a party, notwithstanding, a grievance against another in immediate relationship with him, is held, bound to a holder in due course or (where his grievance does not amount to a defect of title) to a holder for value, there are cases in which even a holder in due course has no remedy whatever against some person purporting to be a party to the instrument; for the simple reason that such person never became bound by the signature at all. This situation arises where the signature in question is forged or unauthorised. There may be a good claim on the part of the holder against parties from whom or through whom he got the document *after such signature*, but, against the person whose supposed contract is a nullity, there is no remedy at all; nor can any title be made through the signature in question. There are other cases where the party really signed, but there is no remedy against him because the signature did not bind him. Strange as

it may seem, however, there is a remedy, not only against parties subsequent to him, but, through his signature, against parties beyond and prior to him. These questions range under the head of Fictitious or non-existent parties—Capacity—Genuineness of signature—Authority.

Now let us clear off first of all the mist which is apt to hang over non-existing parties on the first approach. A student may say "How can business men be dealing with non-existent parties?" The answer is that if all bills were genuine trade bills there would be no such thing as fictitious or non-existent parties. But we saw, in looking at the object and uses of bills, that they have, from their convenience, come to be largely used (1) as guarantees, (2) as mere acknowledgments of indebtedness for the purpose of fixing the amount and the date for payment. The result is that when two or more persons have resolved to resort to the convenient machinery of a bill and have no real drawer, or real acceptor, or real payee to make up the trio, they take in a dummy. One of them becomes the drawer, upon a fictitious acceptor we will say, in favour of the other, who then negotiates the bill away for value, probably arranging with the drawer to find money to retire the bill or take it up at maturity. Or, the bill is *drawn* in a fictitious name, while the acceptor and payee are real persons. Or, the drawer and acceptor are real persons, and the *payee* is a non-existent person. In each of these cases no genuine signature of such person can be given, so that one of the interested parties signs the fictitious name, and if all goes well and the bill is retired or met at maturity no questions are asked, and the bill has fulfilled its object. But if the money is not forthcoming at maturity and the holder begins to look to the parties liable on the bill, he finds out, perhaps for the first time, that one or other of the parties is non-existent or fictitious. Thus arises one class of those questions, which we shall deal with under estoppels or preclusions, where the holder has to fall back upon some real party who is precluded from disputing his liability.

Next as to capacity. Capacity is a person's power to make a contract which shall bind himself. Authority is power to make a

contract so as to bind another. Certain persons are incapable of making a contract which shall bind them. If you enter into a contract with them and they do not depart from the bargain, so much the better for you. If when the time for performance comes they turn round and plead their incapacity, you have no remedy against them. This applies to infants and corporations not authorised to contract by bill. Now with regard to infants and corporations, the position of the holder of a bill, to which they have purported to become parties, is this: He has no remedy against the infant or the corporation, but by section 22 (2) he can enforce the bill against any other parties. This would not be like the case where there has been a forgery or a signature without authority, because in those cases there is a defrauded third party whose rights are inconsistent with any effect *whatever* being given to the signature which purported to convey the title from them. But the infant or the corporation have not been defrauded; they have put their signature to the document and passed it on, probably for value, and are very fortunate not to be liable on the instrument; so that they have no right to object to the bill being enforced against any other parties, whether subsequent or prior to their own transfer. And those other parties have no right to complain, because they are only having enforced against them the liability which they voluntarily incurred. Up to a few years back, there was a doubt whether it would make a difference if the infant gave the bill in payment for necessaries. But the case of *In re Saltykoff*, decided in the Court of Appeal in January, 1891, put this beyond a doubt, and the Court held that an infant cannot bind himself by bill, even for necessaries. He may be sued on the consideration—*i.e.*, for the goods supplied—just as in any other case; and if he sets up infancy, the plaintiff may reply that the goods were necessaries and fit for his station in life, and that issue will be for the jury. But this is a less pleasant position for the tradesman who supplied the goods than if he could go into court with the amount settled, the day for payment fixed and consideration presumed, so that he could apply the summary procedure already alluded to for recovering speedy judgment, with interest from the due date of the bill.

Infants and Corporations.

May pass on liability though escaping liability themselves s. 22 (2).

Different from case of forgery or want of authority.

Infant not liable on bill even for necessaries.

Now in speaking of corporations just now it was necessary to say "corporations incapable of contracting by bill." A corporation is an artificial body entirely owing its corporate existence (as distinct from that of the individuals composing it) to the law, and, consequently, it can only lawfully do those things which are included in the purposes for which it is created. Any other Acts are *ultra vires* or beyond its lawful powers. Now whether a corporation has capacity to bind itself by drawing, accepting or indorsing bills, depends upon whether (1) the power to do so is given to it expressly by the Charter, Act of Parliament, Articles of association or other instrument by which its objects and powers are defined, or (2) whether the power to sign bills is necessarily implied in the objects for which it is incorporated. Now, as we have seen, bills are the essential medium for carrying out trade transactions, so that if a corporation is founded for the purpose of trade, it is necessarily implied that it has power to contract by bill; if it is not a trading corporation, the presumption is the other way, and it would require express power given to it to authorise it to contract by bill. Now the sections to which I call your particular attention on this subject of capacity are, firstly, section 22, sub-section 1 (after saying capacity to incur liability by bill is co-extensive with capacity to contract), *proviso* "nothing in this "section shall enable a corporation to make itself liable as drawer, "acceptor or indorser of a bill unless it is competent to it so to do "under the law for the time being in force relating to corporations."

Corporations.

22 (1).

So that no new capacity to contract is conferred by this Act on corporations.

Next section 91 (2) "in the case of a corporation, where by "this Act any instrument or writing is required to be signed, it is "sufficient if it be sealed with the corporate seal. But nothing in "this section shall be construed as requiring the bill or note of a "corporation to be under seal." The mere putting on the seal is not to invalidate the bill or note as a negotiable instrument. This last proviso is necessary because the usual method for a corporation if it can contract by bill or note is not to contract under seal but per pro the corporation, one of its officers signing for the corporation,

S. 91 (2).

as we shall see when we come to the subject of indorsements hereafter.

Companies Act, 1862.

Now, as you know, Limited Liability Companies are regulated by the Companies Act, 1862, and later statutes incorporated therewith and assuming that the Company is one which, by its documents of incorporation, is empowered to sign bills and notes, the 47th section of that Act lays down expressly: "A Promissory Note or Bill of "Exchange shall be deemed to have been made, accepted, or indorsed "on behalf of any company under this Act if made, accepted, or "indorsed *in the name of the company* by any person acting under "the authority of the company, or if made, accepted or indorsed *by* "*or on behalf or on account of the company* by any person acting "under the authority of the company." Section 41 of the same Act provides that "every limited company under this Act "* * * * shall have its name engraven in legible characters "on its seal and shall have its name mentioned in legible "characters * * * * in all Bills of Exchange, Promissory "Notes, Indorsements, Cheques * * * * purporting "to be signed by or on behalf of such company * * * *."

S. 47.

And by s. 42, "* * * * if any director, manager, or "officer of such company, or any person on its behalf, uses or "authorises the use of any seal purporting to be a seal of the "company whereon its name is not so engraven as aforesaid "* * * * or signs, or authorises to be signed, on behal "of such company, any Bill of Exchange, Promissory Note, "Indorsement, Cheque, * * * * wherein its name is not "mentioned in manner aforesaid, he shall be liable to a penalty "of £50, and shall further be personally liable to the holder "* * * * for the amount thereof, unless the same is duly "paid by the Company."

Principal and Agent.

This brings us to the subjects of genuineness and authority; because after you have satisfied yourself of the capacity of the principal (whether an individual or a corporation), you have still the questions: Is this a genuine signature? If so, has it been placed there by the principal or by an agent? And if by an agent, was he authorised to sign? On these points we have

two very important sections of the Bills of Exchange Code to consider. Bills of Exchange Act.

The first is s. 91 (1) "Where by this Act, any instrument is "required to be signed by any person, it is not necessary that he "should sign it with his own hand, but it is sufficient if his "signature is written thereon by some other person by or under "his authority." And remembering *qui facit per alium facit per se* applies to signature, our next section will be 23. "No person "is liable as drawer, indorser or acceptor of a bill who has not "signed *as such*." Provisos, "(1) Where a person signs a Bill in "a trade or assumed name, he is liable thereon as if he had signed "it in his own name; (2) The signature of the name of a firm is "equivalent to signature, *by the person so signing*, of the names of "all the persons liable as partners of that firm." S. 91 (1). S. 23.

Then we come to s. 24, which lays down that if the signature is a forgery, or placed on by a person without authority, it is a mere nullity so far as regards charging the person whose signature has been so forged or signed without authority. S. 24.

Now you will see that that section contains the broad rule, that forged or unauthorized signatures confer no rights whatever, but the section begins with the words *subject to the provisions of this Act;* and, towards the end, points to the possibility of a person, who has relied on such a signature, being able to treat it as a valid signature against certain parties who are spoken of as *precluded from setting up the forgery or want of authority.*

We will for the present under the questions of genuineness of signature and authority, confine ourselves to the *rule*, and merely remark here that those two qualifications will be the subject of important considerations hereafter, the *former* as to the *protection afforded to bankers* against forgery and want of authority in certain cases, the *latter* as to the *preclusions* of parties to the bill.

Bearing in mind then the absolute nullity of a forged or unauthorised signature so far as regards fixing the person whose name is so signed, we need not enlarge on forgery, but may at once proceed to enquire, who are authorised to sign for others? The first thing to remember is the difference between a general authority to

draw, accept or indorse, and a limited, or special, or particular authority.

If an agent has a general authority and abuses it, the principal is liable to the public and may look, for such redress as he can get, to the wrong-doing agent.

If an agent has only a limited authority, the principal is liable only on acts done under that authority.

Moreover, if an agent who has been held out as having a general authority, ceases to have authority, the principal must take all reasonable steps to notify the termination of that authority to those who have been in the habit of relying on it.

Now how are we to know what is the scope of a general authority? Well, in the absence of any expressly defined authority, brought to the knowledge of or available to third parties, the extent of an agent's usual employment is the measure of his authority. So that if an agent is usually employed by a principal to transact all his business of a particular kind, he is the general agent of that principal, and third parties may safely deal with that agent upon the usual footing, so long as they have no notice that the general agency has been determined. If a clerk has been usually employed to draw, indorse or accept bills, his signature will bind the principal though the money may never come to the principal's use, and even though the agent has been dismissed, if the third parties have no reason to be aware of the determination of his authority.

A particular agent, however, that is to say, one who is employed with limited authority for the particular occasion, is not *presumed* to have any authority and must satisfy those who deal with him of the extent to which he is authorised. This prepares us for section
S. 25. 25 of the Act, which lays down that "a *signature by procuration* "operates as notice that the agent has but a limited authority to "sign, and the principal is only bound by such signature if the agent "so signing was acting within the actual limits of his authority."

Per pro signatures, therefore, require close scrutiny, because you have no general course of dealing to rely on. Even though the same person, to your knowledge, has signed fifty times before in the same way, each signature is merely an assertion of authority to

sign on that occasion, and though previous similar signatures would naturally affect the readiness with which you would be satisfied, yet you accept the signature at your own risk if it should turn out that the agent has in fact departed from his authority. In the case of bills drawn on a banker payable to order on demand (*i.e.*, cheques) the banker is protected (by sec. 60, as to forged or unauthorised indorsements) when he pays in good faith and in the ordinary course of business, but this protection (like those under the head of crossed cheques) only applies to cheques, and, moreover, is limited to indorsements ; so that as to all other bills but cheques, and all other signatures (even on cheques) except indorsements, the banker is open to the same rule as any other party, and pays on a forged or unauthorised signature at his peril.

S. 26 enables an agent to add words to his signature, negativing personal liability, but he must be most careful to leave no doubt of his intention. If he merely adds "agent" or "chairman of the Company," or other descriptive words, they will not avail him any more than if he had added F.R.S. or J.P. to his signature. And, moreover, if there is any doubt of whether the signature has the effect of binding the principal or the agent personally, the holder will have the benefit of the doubt, and whichever construction is most in favour of the validity of the instrument, will prevail. S. 26. (1.) S. 26. (2).

When we were considering the absolute nullity of a forged or unauthorised signature under s. 24 we postponed considering the qualifying words at the close of that section, viz., "unless the "party against whom it is sought to retain or enforce payment of "the bill is precluded from setting up the forgery or want of "authority."

Estoppels or Preclusions.

We are now going to see what is the meaning of being precluded.

You will remember that the holder, besides defences on the merits, such as want of consideration, fraud, duress, illegality, might find himself confronted by a denial of the existence of some of the parties through whom he claims, or of their capacity to give a binding signature, or of their authority to sign, or of the genuineness of the signature. The objection as to capacity has not much, if any, force now, except to defeat a claim against the

incapable party, because as we have seen by section 22 (2) a signature by an infant or incapable corporation gives full rights to the holder against any other party. But showing the non-existence of a party or that his signature was a forgery or without authority, might defeat the holder's claim altogether, unless the doctrine of estoppel or preclusion came to his aid, and enabled him to recover against the parties precluded or estopped from setting up the non-existence, forgery or want of authority.

The doctrine of estoppel or preclusion is simply this—that if a person deals with another upon a certain basis and, upon that basis, the person with whom he is dealing gives him some benefit or takes some burthen upon himself, then the law insists that the transaction shall be carried through on that basis even though it should appear that the basis is in fact erroneous. So that the person who, in the early stage of that transaction, has had the benefit of a certain supposition, must not, when the other party's turn comes to derive advantage, turn round and allege the true facts as a ground for getting out of his bargain. If the erroneous facts were good enough basis for him to obtain his advantage upon, they must be left undisputed till the other party has had his share of the benefit.

Preclusion may arise as part of the bargain; and each of the contracts of drawer, acceptor, and indorser gives rise to preclusions of this sort.

But preclusion may arise from any circumstances, outside the contract itself, which make it unfair for a person, who has led another to act upon the faith of certain facts existing, to escape liability afterwards by denying those facts. Now this doctrine explains that reservation at the end of section 24, and the preclusions of the acceptor under section 54 (2), those of the drawer under section 55 (1) (b), of the indorser under section 55 (2) (b) and (c), of the maker of a promissory note under Section 88 (2), and the warranties of the transferor by delivery under section 58 (3). In all those cases the party is held to that state of facts which is presupposed and involved in the contract into which he enters. *It is not how much appears on the bill*, at the

Estoppel by contract.

time that a party puts his name to it, that regulates his preclusion. At first sight, one might think it merely amounted to this—that each party guaranteed everything regular with the bill, up to the time of his putting his name to it. This is not the criterion. The test is, what in honesty and fair dealing is necessarily involved and pre-supposed in the act of his becoming a party to the particular contract into which he enters, with the knowledge that the instrument is likely to be taken for value by a holder in due course? *e.g.*, an acceptor, by accepting, admits to any holder in due course the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill. For, upon any other supposition, his acceptance of the bill for the purpose of its being negotiated, or with the knowledge that it may be negotiated, would be assenting to an order which was a nullity. But suppose that, at the time he accepts, there are several indorsements on the bill. No engagement as to these is in any way pre-supposed or involved in the contract which he enters into in accepting the bill. Whether the bill has been properly passed from one holder to another on its way to him is not a matter *involved* in his assenting to the order of the drawer to pay the contents of the bill to whomsoever may be the holder at maturity.

You are now in a position to appreciate the neatness with which, under the head of "Liabilities of Parties," the draftsman has dealt with this part of his subject, by laying down what precisely is the contract which each of the parties to the bill enters into when he puts his name to the bill, and by immediately following this statement by the preclusions arising out of each of those contracts. You can read them for yourselves. Section 54 gives the contract and the preclusions of the acceptor. Section 55 (1), those of the drawer; the same section (2), those of the indorser. The transferor by delivery of a bearer bill incurs no liability on the bill because his signature is not upon it, but his negotiation of it gives rise to certain warranties which are set out in section 58 (3). And lastly, the maker of a promissory note, who in many respects is analogous to the acceptor of a bill, requires a separate

section to himself for this purpose, because there is no drawer in his case, and in section 88 (1), you will find what his contract is and in the same section (2), his preclusion on the note.

Estoppel by conduct.

As an example of a party being estopped or precluded by his conduct, apart from his signature to the bill or note, one instance will suffice. Supposing, before giving value on a signature, the payer were to write and ask the party whose signature it purported to be whether it was genuine or not, and the person enquired of, knowing the object of the enquiry, replied that it was his, and value thereupon was paid, the person who had so acknowledged the signature would on discovering the forgery be precluded from setting it up against the party whom he had misled.

Principal and Surety.

Some insight into a few of the leading doctrines of Principal and Surety will help very much towards an understanding of those parts of the Act which relate to the Duties of the holder, and to Discharge, whether of parties or of the bill.

Prior to acceptance the drawer is the principal debtor, and indorsers are sureties for him.

On acceptance, the drawee takes on himself the principal liability, and the drawer and indorsers are sureties for the acceptor, but they are not in a position in which ordinary sureties are, where several are sureties for one person ; that is to say, while they are all co-sureties towards the holder who may proceed against any or all on default of the principal debtor, they are not co-sureties *towards each other* and entitled as such to contribution from each other all round. As regards each other the most rigid punctilio and order of sequence prevails. As between themselves, each prior party is a principal and those who come after him are sureties. Now this is very important, because it is to that peculiar modification of the relation of principal and surety that the ordinary doctrines of principal and surety have to be applied.

Rule I. Creditor bound to protect Sureties' interest to best of his power.

When one man becomes responsible for the debt of another, the law holds him strictly to his bargain with the creditor, but at the same time it calls on the creditor to take all reasonable steps in his power to protect the interests of the surety. How is this carried out in the contracts before us ? In the first place the creditor

must duly present for acceptance, where acceptance is necessary, and afterwards for payment, and by section 39 (1) (2) (3), and section 40 (2), failure to present for acceptance, where necessary, discharges the sureties. Again, presentment for payment must be duly made, and by section 45, if it is not, the drawer and indorser, i.e., the sureties, are discharged ; and where a bill is dishonoured whether by non-acceptance or non-payment, by section 48, notice of dishonour must be given to the drawer and each indorser, otherwise any drawer or indorser to whom notice is not given will be discharged. Under section 51 (2) (9), the holder's duties as to promptitude in protesting (which in foreign bills takes the place of notice of dishonour) are regulated by the same considerations. The reason for requiring notice of dishonour, of course, is that it might greatly prejudice those sureties who might have effects in the hands of, or about to pass into the hands of, a principal, if they had not the earliest notice that could reasonably be given of the default of the principal debtor.

S. 39 (1) (2) (3). S. 40 (2). S. 45. S. 48. S. 51 (2) (9).

But these duties are only required to be fulfilled to the best of the ability of the creditor. So that we are prepared to find, side by side with elaborate provisions for carrying out those duties of the holder, a series of careful provisions excusing delay, or dispensing with the performance of those duties altogether, where the delay or omission is unavoidable or results from the action of the surety himself, or when the surety is only a surety in form, being in reality the principal debtor. Now viewed in that light, those formidable sections from 39 to 52 become not so many intricate and vexatious rules, introduced for the purpose of tripping up bank managers, cashiers, collecting clerks and holders of bills generally, but land-marks, friendly aids to which in any case of doubt or difficulty you may turn. Section 49, for instance, with its 15 rules for giving notice of dishonour, is likely to dishearten or discourage a student of the Act unless he reflects as to how such a section originated. When a skilful draftsman codifies the law on such a subject, it is rather like a person mounting an object on a microscopic slide. That each part may be visible when looked for, and all equally in focus, every part,

Rule II. Only to best of his power.

S. 49.

whether prominent or subordinate, normal or exceptional in Nature, is brought up into the same plane. These sections and sub-sections set out, if not every conceivable case, almost every case of typical importance which has actually arisen and been decided upon, and therefore the more voluminous and detailed a section of that sort is, the more likely are you to find the precise case in which you have a doubt specially provided for. I may have some hints to offer you hereafter on the study of this important and voluminous section.

Rule III. Discharge and giving time.

The giving of time by a creditor to a principal debtor releases the surety, because giving time enlarges and prolongs the risk of the surety. And if the creditor discharges the principal debtor absolutely, his doing so is held to imply that he discharges the surety; for, what would be the advantage to the debtor of being discharged, if the creditor, by coming down upon the surety, sent the surety down upon the debtor? But if the creditor discharges the debtor only to the extent of saying "I shall take no steps "against you myself, but I shall claim against the surety, and he "will no doubt come upon you for the amount," that is not such a discharge of the debtor as releases the surety. This explains the

S. 63 (2).

provision in section 63 (2) that a renunciation, by the holder, of his rights against one of the parties, releases all parties to the bill subsequent to the party in whose favour the renunciation is made; for these subsequent parties as you know are sureties for those before them on the bill.

Rule IV. Payment by principal discharges all. S. 59 (1).

Payment of the debt by the principal debtor obviously puts an end to the liability of the surety. This explains the first part of section 59 (1) as to the discharge of the bill itself, because no liability whatever is left outstanding after the acceptor or principal debtor has paid the bill in due course. It also explains, in

S. 59 (3).

section 59 (3), why the payment in due course of an accommodation bill by the accommodated party discharges the bill.

Rule V. Surety entitled to securities in hands of creditor.

A surety, on being compelled to pay, is entitled to all securities for the debt in the possession of the holder, and this has been held to apply to the various contracts of suretyship which arise on a bill (Duncan Fox & Co., and N.S. Wales Bank 6 App. Cas. 1).

And the surety is entitled to this benefit, whether he was aware of the securities or not, when he became surety ; because his right arises, not out of any contract, but from the peculiar nature of his position and the equities that arise out of it, and if a creditor having securities does not do his best to keep them available he will find that, by so prejudicing the position of the surety, he has released him from liability altogether.

Rule VI. Acceptances for honour construed in ease of suretyship, S. 65 (4).

It is in ease of suretyship that we find by section 65 (4) that when an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer, because the drawee, not having accepted, is not liable on the bill, and the drawer is therefore the principal debtor, and intervention on his behalf relieves the largest number of sureties. So again by section 68 (2) where a bill is dishonoured by non-payment, and two or more persons offer to pay for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

S. 68 (2).

Presumptions.

Now let us look at some of those presumptions which the law makes in favour of the correctness, validity and negotiability of bills of exchange. Presumptions are made on various grounds. Sometimes on account of their inherent probability, sometimes on grounds of public policy, sometimes on grounds of the balance of convenience. But those to which I wish to direct your attention are provisions in the Act. Our present aim is to get some of the numerous complicated provisions grouped and explained, so that when you come to a detailed examination of the Act itself, it will be an advantage to recognise previous acquaintances, just as friendly faces, appearing in different directions, might encourage a person otherwise disinclined to face a crowd.

Presumptions are either *rebuttable* or *conclusive*.

1. The date of a bill or the acceptance, or of any indorsement is *primâ facie* the true date. Section 13 (1.)

S. 13 (1).

2. Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill (Baxendale *v.* Bennett, 3 Q.B.D. at p. 531, C.A.) it operates as a *primâ facie* authority to fill it up as a complete bill for any amount

the stamp will cover, using the signature for that of drawer or acceptor or indorser. Section 20 (1.)

S. 20 (1).

3. So where a bill is wanting in any material particular the person in possession has *primâ facie* authority to fill up the omission in any way he thinks fit. Section 20 (1). As against any person who became party thereto prior to the completion of the bill, these particulars must be filled in within reasonable time and strictly in accordance with the authority that was actually given; so that as against those immediate parties these last two presumptions are rebuttable: Section 20 (2).

S. 20 (1).

S. 20 (2).

4. But if any such instrument, after being so filled up, is negotiated to a holder in due course, those who pass bills about in such an incomplete condition must take the consequences of any error, delay or departure from authority, and the above last two presumptions are conclusive, *i.e.*, the bill may be enforced as if it had been filled up in reasonable time and strictly in accordance with the authority given. Section 20 (2). Proviso.

S. 20 (2). Proviso.

5. In the hands of a holder in due course, a valid delivery of the bill by all parties prior to him is conclusively presumed. Section 21 (2). This is a most important presumption in favour of the negotiability of paper. It puts in the strongest light the necessity for all those who have to deal with negotiable instruments watching over the custody of the bill itself, and employing only the most trustworthy hands for its conveyance from place to place. When once the document is a bill, or, if incomplete, has been delivered in order that it may be filled up and take effect as a bill, then, however fraudulently the person to whom it is entrusted negotiates it away, the holder in due course can recover against the party who has been so defrauded. But the document must be a real bill. If a man wrote his name upon a piece of paper, to try a pen for instance, and somebody took the piece of paper and filled it up as a cheque and stamped it and negotiated it to an honest holder for value, there would be nothing to prevent the so-called drawer from showing what the true facts were.

S 21 (2).

6. There also is this general presumption :—Where a bill has been signed by a party as drawer, acceptor or indorser,

and it is no longer in his possession, a valid and unconditional delivery by him is presumed until the contrary is proved. Section 21 (3). S. 21 (3).

7. In determining whether a signature is to be treated as that of a principal or of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted. Section 26 (2). S. 26 (2).

8. In ordinary contracts not under seal a consideration must be proved, but on all the contracts to a bill of exchange it is *primâ facie* presumed. Section 30 (1). S. 30 (1)

9. Every holder is *primâ facie* a holder in due course, though on proof or admission that the acceptance, issue or subsequent negotiation is affected with fraud, duress (or, as the Scotch say, force and fear) or illegality, the burthen of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill. Section 30 (2). S. 30 (2).

10. Where more than one indorsement appears on a bill, each is presumed *primâ facie* to have been made in the order in which it appears on the bill. Section 32 (5). S. 32 (5).

11. Except where an indorsement bears date after the maturity of the bill (in which case the presumption of true date, which we noticed first, applies), every negotiation is *primâ facie* presumed to have been effected before the bill was overdue. Section 36 (4). S. 36 (4).

12. When a bill or signature appears to have been cancelled, the cancellation is presumed *primâ facie* to have been done intentionally, and if by an agent, with the holder's authority. Section 63 (3). This seems at first sight a presumption *against* the correctness, validity and negotiability of bills, but it is not so. It is a presumption that the bill as it stands, means what it says, and, the cancellation appearing on its face, a party chargeable on the bill would have the presumption in his favour that the bill which purported to be discharged was really discharged.

Now there are a dozen presumptions for you, arranged in the order in which they occur in the Act, and having seen them in

this connection as part of the policy of the law to give effect to the purport of the bill, you will regard them as acquaintances when you meet them again as in their several places under different parts of the code.

Presumption as to Adhesive Stamps.

One more presumption, not enacted by the Bills of Exchange Act but by a Revenue Statute, will show how the law favours bills.

The Stamp Act of 1870, as you know, laid down stringent rules as to the affixing and cancellation of adhesive stamps denoting the *ad valorem* duty upon bills of exchange and promissory notes drawn or made out of the United Kingdom. You can imagine what a paralysing effect would be produced upon negotiability if a person taking a bill with an adhesive stamp on it, purporting to be duly cancelled, might find the instrument reduced to a dead letter by some irregularity in the affixing or cancellation of the stamp. Well, section 51 of that Act, proviso 1, afforded in favour of any *bonâ fide* holder thereof into whose hands it comes in that condition a conclusive presumption that such cancellation was duly made. And that was supplemented by giving him power to cancel the stamp himself if the bill comes to his hands with the stamp affixed but uncancelled. And when the Stamp Act of 1891 replaced the Act of 1870, the same wholesome provisions were inserted in section 35.

Stamp Act, 1870, s. 51, Proviso (1). Replaced by Stamp Act, 1891, s. 35.

Reasonable Time.

Another set of provisions, connected by a common principle, are worth looking at, as a group, before passing to a general survey of the Act. They are those in which certain consequences, and serious consequences, follow from the mere lapse of time, and yet no specified time is limited after which those consequences are to follow. In some countries, the tendency is to fix a hard and fast line, and say after the lapse of so many days, weeks, months, such or such consequences will follow from delay. There are great advantages in that method, because you get certainty. And some people will say certainty, even with occasional hardship, is better, in business, than uncertainty at any price. However, the English law, not only in the cases we are going to consider to-day, but in a great number of other matters, abhors a hard and fast rule in varying circumstances, preferring to rely upon the common sense of men of

business and, in the last resort, of a legal tribunal. And the word used to express this flexible and adaptable quantity or quality in any requirment, is "reasonable."

(1). We have seen that, by section 20 (1), when a simple signature, on a blank stamped paper, is delivered by the signer to be converted into a bill, it operates as a *primâ facie* authority to fill it up for any amount the stamp will cover, using the blank signature as that of the drawer, acceptor, or endorser; and if a bill is wanting in any material particular, *e.g.*, the date, the person in possession of it has, *primâ facie*, a right to fill up the omission in any way he thinks fit. And if a document, built up in this way, gets into the hands of a holder in due course, it is binding in his favour as it stands. But in order that the person who so fills it up (or any person identified with him by notice or by want of value) should be able to enforce it against anyone who became a party to it before its completion it must be filled up *within a reasonable time*. S. 20 (1).

On the one hand, it is not to be kept indefinitely hanging over the parties who have trusted to the honour, good sense and promtitude of the person to whom it was handed to complete. If it were, all proof, even all recollection, of the precise circumstances under which it was handed to him might have failed and the door would be open to all sorts of frauds. On the other hand, how could anyone possibly lay down the number of months or even years after which every such incomplete bill, no matter under what circumstances or conditions given, should become waste paper? The Act therefore goes on to say reasonable time in this respect is a question of fact. The parties may come and prove exactly what took place, and for what purpose, and with what instructions the incomplete bill was handed to the party who now seeks to enforce it.

(2). It is involved in the definition of holder in due course that he takes the bill before overdue, section 29 (1) (*a*), because that is one of the circumstances upon which his being bound to enquire into the title of his transferor depends. Overdue.

S. 36 (2). And by section 36 (2), where an overdue bill is negotiated the holder gets no better title than the transferor had; in other words, though an overdue bill retains the element of transferability it is no longer negotiable in the full sense of the term. Anybody can tell you when a bill after date or after sight is overdue. But supposing a bill is payable on demand, it is not due till the money is demanded. Unless therefore it suits the holder to present the bill for payment, it never becomes due, and therefore however long he delays it can never be *overdue* in the strict sense. But it is clear that if a holder took a bill, on demand, that had been a very exceptionally long time outstanding, it would raise a suspicion that there was something wrong about that bill. Here again the law steps in and says it is impossible to fix a precise time when suspicions ought to arise, because the circumstances and the purposes involved are so widely different; and the test provided is, whether the bill has been in circulation for an *unreasonable* length of time, and whether that fact is apparent on its face, so that a person taking it would know it was a stale bill.

S. 36 (3). Section 36 (3). Unreasonable length of time is here again a mere question of fact. *Id.*

S. 40 (1). (3). A bill payable after sight is negotiated. By section 40 (1), the holder must either present it for acceptance or negotiate

S. 40 (2). it within a reasonable time; and, by (2), if he does not do so the drawer and the indorsers are discharged.

But here the reasonableness of the time is dependent upon the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case. The construction to be put on the bill would be for the Court, so that reasonable time here would be a question of law and of fact together.

(4). We considered just now when a bill on demand became overdue for the purpose of fixing the holder with suspicion of a defective title. But there is another question arising on bills payable on demand. How long are they to be held over the drawer and indorser? No doubt the time of applying for payment is left to the payee or his transferees; but it is not intended that the bill should be kept outstanding so long that the drawer and

indorsers would never know whether a claim might be sprung upon them. Section 45 (2) accordingly enacts that a bill payable on demand must (unless presentment for payment is dispensed with under certain special provisions of the Act) be presented within a reasonable time. S. 45 (2).

The time runs from the issue, as regards the drawer, and from the indorsement to charge the indorser; but, in either case, the nature of the bill, the usage of trade and the facts of the particular case are to be considered in deciding what is reasonable time.

(5). By section 49 (12) notice of dishonour must be given within a reasonable time. Here it is noticeable that an attempt is made to lay down a definite time for the majority of cases, but it is only "in the absence of special circumstances" that the rules are to apply. S. 49 (12).

In the absence of special circumstances notice of dishonour is not deemed in reasonable time unless :—

(*a*) When the giver and the receiver of the notice live in the same place, the notice is given or sent in time to reach the receiver on the day after the dishonour of the bill.

(*b*) Where they reside in different places, the notice is sent off on the day after the dishonour, if there be a convenient post on that day, and, if there be no such post, then the next post after.

(6). Reasonable time is material, too, under the clause introduced by Lord Bramwell for distributing the loss fairly between the drawer and the holder of a cheque, when the cheque is not presented for payment within a reasonable time, and where the banker fails in the interval. The drawer is discharged, as before, if he is damaged by the delay, but the holder is now entitled to stand in the place of the drawer, and recover what he can in the Bankruptcy. S. 74 (2).

In this instance, and in determining what is reasonable time, regard must be had to the nature of the instrument, the usage of trade *and of bankers*, and the facts of the particular case. So here it is a question of law and fact.

7. By section 86 (1), when a note payable on demand has been endorsed, it must be presented for payment within a S. 86 (1)

reasonable time of the indorsement, or the indorser will be discharged,

S. 86 (2)

And, 86 (2), regard must (in deciding on reasonable time) be had to the nature of the instrument, the usage of trade and the facts of the particular case. So that when a note on demand is endorsed, the same rule is applied to protect *indorsers* from having claims held over them indefinitely, as was applied to indorsers of bills.

Different rule as to notes on demand as to being overdue for defects of title.

But the rule as to the instrument being deemed overdue, for the purpose of affecting the holder with defects of title, is not the same, in the case of promissory notes, as with bills under section 36 (3), because in practice it is well known that bills are principally drawn for negotiation and to carry out payments, whereas a promissory note is very frequently given with the intention of being held as a continuing security. So that it is worth noticing, before leaving the question of reasonable time, that by section 86 (3) "Where a note payable on demand is

S. 86 (3).

"negotiated the person taking it is not affected with defects of title "merely because it appears that a *reasonable time* for presenting it "has elapsed since its issue."

Summary of Lecture.

We have now looked into the origin and uses of bills and the favour with which they are regarded by the Legislature and by the Courts. This retrospect was not, I think, without value as a guide to the reasons for existing law. With regard to the law as it stands, we have, I trust, gained a substantial knowledge of those parts of the Codifying Act which relate to capacity and authority, consideration, and liabilities of parties. These are just the portions on which information might be less readily available to you in your banking houses, because, though necessary to a right understanding of the Act, they have little or no relation to the routine transactions on a bill. We have also seen how some of the duties of the holder, and some of the provisions as to discharge, both of bills and of parties, are rendered more intelligible by reference to the rules of Principal and Surety. And lastly, by passing in review, collectively, the presumptions as to bills, and

the provisions as to reasonable time, we have now, I hope, established, at least, an acquaintance with numerous other points of the Act, preparatory to a more intimate knowledge of them hereafter in their respective places.

LECTURE II.

OF DRAWING AND ACCEPTANCE.

General Survey of the Bills of Exchange Act, 1882.

THE Act, you will observe, is divided into five parts. Part I contains the interpretation of terms, (section 2). The only terms which, in the time at our disposal, call for special notice are Acceptance, Banker, Delivery and Issue. Part II relates to Bills of Exchange and is sub-divided into the heads of Form and interpretation, Capacity and authority of parties, Consideration for a bill, Negotiation of bills, General duties of the holder, Liabilities of parties, Discharge of bill, Acceptance and payment for honour, Lost Instruments, Bill in a set, and Conflict of Laws. Of these headings, I propose that we should examine carefully Form and Interpretation (which you will find devoted chiefly to the *drawing* and *acceptance* of a bill) and Negotiation (which includes *Indorsement*). The remaining headings of Part II, as well as Part IV (on Promissory Notes) and the Supplementary Provisions collected in Part V, will have been touched upon more or less fully before we conclude our inquiry, But Part III being devoted to *cheques on a banker*, will require special attention at our hands.

Interpretation of Terms, s. 2.

Let us look then at the Interpretation Clause, (section 2.) The whole of this section is governed by the words "unless the context "otherwise requires." As to Acceptance, the definition must be read with sections 17 (1) and 21 (1). "The acceptance of a bill "is the signification by the drawee of his assent to the order of "the drawer." Section 17 (1).

Acceptance.

Every contract on a bill, including acceptance, is incomplete and revocable, until delivery of the instrument in order to give effect thereto: "Provided that where an acceptance is written on "a bill and the drawee gives notice to, or according to the "directions of, the person entitled to the bill that he *has accepted* "it, the acceptance then becomes complete and irrevocable." Section 21 (1).

"Acceptance," says section 2, "means an acceptance completed by "delivery or notification."

"Banker includes a body of persons, whether incorporated or "not, who carry on the business of banking." This, you will notice, is not a definition, but a statement that the term includes "a body of persons" if they carry on the business of banking. The business of banking was stated by Lord Campbell to be well recognised by the *lex mercatoria*, and judicially noticed. (Bank of Australasia *v.* Breillat, 6 Moore P. C. 173, referring to Brandao *v.* Barnett, 3 C. B. 519). One can easily imagine cases in which it might be most important to consider whether or not persons dealing with a bill were bankers within the meaning of the Bills of Exchange Act, 1882. And you may notice that there is no requirement, in the clause before us, that before a person or body of persons shall be within the term banker for the purposes of this Act, he or they shall have made any return to, or been registered by, the Inland Revenue Commissioners or the Registrar of Joint Stock Companies. Banker.

In the The Bankers' Books Evidence Act, 1879 (42 Vict., c. 11), section 9, it is laid down that in that Act "the expressions bank "and banker, mean any person, persons, partnership or company "carrying on the business of banker *and having duly made a "return to the Commissioners of Inland Revenue*" and also certain Savings banks.

And the Revenue, Friendly Societies, and National Debt Act, 1882, which received the royal assent the same day as the Bills of Exchange Act of that year, provided, by section 7 (2), that the expressions bank and bankers in the Bankers' Books Evidence Act, 1879, shall include any company carrying on the business of bankers to which the provisions of the Companies' Acts 1862 to 1880 are applicable, *and having duly furnished to the registrar of Joint Stock Companies a list and summary* (as required by the second part of the Companies' Act, 1862, with a certain addition).

But those Acts conferred certain privileges on bankers ; and it may well be that a compliance with the legal requirements as to returns and registration was deemed a proper condition precedent

to their obtaining those benefits. Whereas the Bills of Exchange Act, 1882, besides conferring benefits, imposes very serious responsibilities on bankers, and an omission on their part to comply with legal requirements would, of course, be no ground for exempting them from a liability. At all events it is worth noticing that (as in the case of the Stamp Act, 1891, section 29) the interpretation of banker, in the Bills of Exchange Act, 1882, contains no such limitation, and is left entirely dependent on the nature of the business carried on.

Delivery.

"Delivery means transfer of possession, *actual or constructive*, from one person to another." So that if a person was already in possession of a bill as agent for another, and, by the wish of the principal, ceased to hold it as agent and retained possession of it on his own account, this would be a sufficient delivery, without any actual transfer from one person to the other.

Issue.

"Issue means the first delivery of a bill or note, *complete in form*, "to a person who takes it as a holder." You might want to know when a bill was issued, in many cases. For example, when a bill is *expressed* to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill. Now suppose the bill is undated, interest runs from the *issue* thereof—

S. 9 (3).

section 9 (3). And when a bill, expressed to be payable at a fixed date after sight, is *issued* undated, * * * any holder may insert therein the true date of issue, * * * and the bill shall

S. 12.

be payable accordingly (section 12). Under section 30 (2), if, in

S. 30 (2).

an action on a bill, it is admitted or proved that the acceptance, *issue*, or subsequent negotiation of a bill is affected with fraud, etc., the burthen of proof is shifted, and the holder must prove value given in good faith subsequent to the fraud.

S. 72.

Again, under the head of Conflict of Laws, section 72 regulates the rights, duties and liabilities of parties, where disputes arise on bills drawn in one country and negotiated, accepted or payable in another. Now if you look at that section you will find, in subsection (1), that the validity of a bill (*i.e.*, the drawing) as regards requisites in form, is determined by the law of the place of *issue*, and the validity, as regards requisites in form, of the supervening

contracts (acceptance, indorsement, acceptance *suprà* protest), is determined by the law of the place where such contract was made. But that is followed by a proviso that (*a*) where a bill is issued out of the United Kingdom, it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue; and (*b*) although a bill may have been issued out of the United Kingdom, yet, if it complies in form with the law of the United Kingdom, payment of it may be enforced as on a valid bill between all persons who negotiate, hold, or become parties to it in the United Kingdom.

When is a bill "complete in form?" The above examples show us that the bill is complete, for the purposes of issue, quite irrespectively of the supervening contracts, and that it is the *drawing* which must be complete in form before issue, though the "supervening" signatures may, of course, be put on before the bill is issued. They also show us that a bill may be issued and therefore be "complete in form," for this purpose, although there is omitted something (the date) which, when supplied, will be a material particular under section 64 (2), and is, therefore, presumably one of the instances of incompleteness open to remedy under section 20. In the definition of a holder in due course, we saw that the holder, to be protected, must have taken the bill *complete* and regular on the face of it, and possibly "complete" for this purpose would be interpreted according to the stage of the bill's career at which the holder took it. It might be reasonable at that stage to look for particulars, the absence of which would have been no incompleteness at the time of its first delivery after the drawing. So that although, in later stages, we may be concerned with "material particulars" and a completeness not called for at the time of issue, we are only concerned at present to know what is the least that is necessary to constitute a valid bill. This brings us to that definition of a bill which at the outset we postponed, and, I think you will say in a moment, wisely postponed, to a more convenient season. We now enter, therefore, upon "Form and Interpretation," comprising sections 3 to 21. Of these, 3 to 16 refer to Drawing, and 17 to 21 refer to Acceptance.

Form and Interpretation, ss. 3 to 21.

But we shall find that wherever, in laying down the law as to a drawing or as to an acceptance, something is stated which equally applies to one or all of the other contracts on a bill, the opportunity is taken by the draftsman to state the law in its full extent and so to avoid a misleading inadequacy of statement on the one hand and needless repetition on the other. Thus, while we are occupied in the main with the drawing, we shall find in section 8 (3) the effect of an indorsement in blank (in rendering a bill payable to bearer) is introduced, side by side with the drawing of the bill originally payable to bearer. In sub-section (5) indorsement to order of a specified person is mentioned as producing the same result as a drawing to his order. Section 10 (2) deals with bills drawn payable on demand ; and acceptance or indorsement of a bill when overdue is there introduced as making the bill (*quoad* the parties so accepting or indorsing) payable on demand. In section 13 the presumption as to true date is not confined to the date of the drawing, but is stated as extending also to the date of acceptance or indorsement. In section 15, while stating the drawer's right to insert a "case of need," opportunity is taken to say that any indorser may do so. And in section 16 it is declared that a drawer—and also that an indorser—may insert an express stipulation negativing or limiting his liability to the holder, or waiving, as regards himself, any of the holder's duties.

With section 17, we come upon the acceptor's territory ; and sections 17, 18, 19, and the proviso to 21 are confined to acceptance, but in section 20 and the residue of section 21, which deal with incohate instruments and delivery, the doctrines laid down are applicable not only to acceptance but also to drawing and indorsement, and therefore the opportunity is taken, of, once for all, stating these rules in their entirety.

Drawing, s. 3.

What a shock it might give to a young bank clerk if someone in authority were to ask him, without any warning, what had become of an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it was addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order

of a specified person, or to bearer. And how relieved the poor young fellow would be to find that this only referred to a bill of exchange which he had safely by him all the time. But after refreshing our recollection, as we have done, as to the origin and uses of bills and the requisites of negotiability, such a definition as that has no terrors for us; because we can see at a glance that to fulfil its purpose a bill could not well do otherwise than answer to that definition in every particular. How many traders would be willing, in the press of business, to take an assignment of a debt, if payment was conditional on something happening, the failure of which would relieve the debtor from any necessity to pay? How many bankers would be ready to discount a bill for so many tons of ironstone or for an operatic air? In its general outline, the definition obtains a ready assent from anyone who sees how essential to the commercial utility of these instruments are the qualities of certainty and ready convertibility into cash. Definition of a bill

But the definition needs expanding or expounding when we come to consider more particularly whether certain instances would or would not comply with the general requirements which it embodies. Accordingly (with the exception of section 4, which defines inland and foreign bills) the remainder of section 3 and the rest of the sections to 14 inclusive are devoted to expanding the various portions of that definition. The definition expanded.

We may first notice that sub-section (4) of section 3 is of a negative kind, and states that certain matters or omissions, which would invalidate the bill in some foreign countries, do not invalidate it in this country. Section 3 (4) and section 13 (2) had better be read together, thus:—

A bill is not invalid by reason—

(*a*) that it is not dated [or ante-dated, or post-dated or bears date on a Sunday, section 13 (2)].

(*b*) that it does not specify the value given, or that any value has been given therefor.

(*c*) that it does not specify the place where it is drawn or the place where it is payable.

The definition can now be conveniently divided into nine parts to show more clearly the precise bearing of the subsequent sections in expanding the definition, thus :—

1. Unconditional	s. 3 (3).
2. Addressed by one person to another	ss. 5 (2), 6.
3. On Demand	s. 10.
4. Fixed or Determinable	ss. 11, 12, 13, 14.
5. Sum Certain	s. 9.
6. In Money	s. 3 (2).
7. To or to the order of	s. 8 (4), (5).
8. A Specified Person...	ss. 5 (1), 7.
9. Or Bearer	ss. 8 (3), 7 (3).

Let us now take these in the above order.

Uncon-ditional.

1. Unconditional.—If the *order* is to pay out of a particular fund, the payment must, of course, depend upon the fund being in existence at maturity of the bill, so this form of order is clearly not unconditional within the definition. But, so long as the drawee is absolutely and unconditionally ordered to pay the amount at maturity, merely mentioning a fund out of which he is to reimburse himself or an account to be debited, or the transaction giving rise to the bill, does not make the bill in any way a conditional order.

S. 3 (3).

S. 3 (3).

Addressed by one to another.

2. Addressed by one person to another.—But the same person may act in both capacities, *i.e.*, both as drawer and drawee. This happens, when for example a Manchester branch bank draws upon the head office of the same concern in London.

It must also be remembered that the drawee may be a fictitious person, or a person not having capacity to contract, but in either of these cases the holder may regard the drawer as the principal debtor on the instrument, as he has not furnished him with a responsible drawee, and may treat the drawer as if he were the

(2).

maker of a promissory note. Section 5 (2).

The drawee must be named or otherwise indicated with reasonable certainty ; for how, otherwise will the holder know to

S. 6 (1).

whom he is to present it ? Section 6 (1.) And if the bill is

addressed to more than one drawee, whether they are partners or not, it must be an order requiring them all, in any event, to join in accepting, but an order addressed to two drawees in the alternative, or to two or more drawees in succession, would introduce an uncertainty which would invalidate the instrument as a bill of exchange. Section 6 (2). S. 6 (2).

On demand.

3. On demand.—(1) A bill may be *drawn*, payable on demand, either (*a*) by expressly ordering the drawee to pay on demand or at sight or on presentation, or (*b*) by expressing no time for payment. (2) And a bill which was originally drawn payable at a fixed or determinable future time, may, after that time has elapsed, become payable on demand as against an acceptor or indorser who accepts or indorses it when it is overdue. Section 10. S. 10.

Fixed or determinable time.

4. Or at a fixed or determinable future time.—A "fixed" time is not defined in the Act but presumably would be on a specified date, *e.g.* "on the 15th August," or "on the 26th of April (fixed)" the case put in "Questions of Banking Practice," 4th edit., Question 133, in which case days of grace were stated not to be claimable. But a "determinable future time" is, by section 11, (1) "A fixed period after date or sight; (2) A fixed period after the "occurrence of a specified event which is certain to happen, though "the time of happening may be uncertain." And if an instrument is expresed to be payable on a contingency, we have already seen that it is not unconditional and therefore not a bill, but the same section 11 goes on to say that the happening of the event does not cure the defect. So that if an instrument were drawn payable on the drawer's attaining a certain age which he had not yet reached, or on his marrying a certain person, it would not be validated as a bill by the happening of either of those events. But a bill payable on his death would be valid as against his executor or administrator. Section 12 deals with the case of the date being omitted, and section 13 gives us the presumption of true date; and provides, as we have seen, that ante-dating, post-dating and dating on a Sunday do not invalidate a bill. S. 11. S. 12. S. 13.

Days of grace.

The provisions as to days of grace are conveniently inserted in this part of the Act, because the time for payment is, of course,

one of the chief matters to be considered by the drawer. The
S. 14. rules on this subject are so clearly laid down in section 14 that you would probably learn them there for yourselves better than from any other source. But, in doing so, I will ask you, before applying them, to be careful to see (1) that the bill is not payable on demand as defined in section 10 which we have just considered; (2) that the bill itself does not "otherwise provide," *e.g.*, by saying "the 26th April (fixed)" or "three months after date without grace." Some acceptors have a way of accepting, and, in the acceptance, specifying the date at which (after adding the days of grace) the bill would be due and payable, as the date for which they accept. This is not a desirable habit because it puzzles the holder as to what is the proper course for him to adopt. On the one hand, it may be merely a sort of thinking aloud on the part of the acceptor, and may mean no more than if he had accepted simply and left the days of grace to be added by operation of law; on the other hand, it may be an intentional variation of the drawer's order. In the latter case, it would be a qualified acceptance which the holder is not bound to take, but if he does take it he has only the acceptor to look to, unless the drawer and the indorsers, or some of them, have assented or afterwards assent to the variation. Now, if the acceptor were to accept payable at some totally different date to that on which the days of grace would, in the ordinary course, expire, the holder's course would be perfectly clear, for he would either give notice of dishonour or notify the variation, according as he decided to refuse or take the qualified acceptance. And when the acceptor takes the ambiguous course of specifying the very day on which grace would expire, the holder, to make himself safe, had better at once apply to the acceptor for a definite statement as to whether his acceptance is an assent to or a variation of the drawer's order; and at the same time give notice of dishonour, stating that the ambiguous acceptance is the reason of doing so, and that a definite expression of intent has been applied for, which, when received, shall be forwarded. If the acceptor pledges himself to have given an unqualified acceptance, no harm will have been done by the notice

of dishonour. Whereas if the acceptor gives no reply, or replies that he has varied the drawer's order, the holder will be able to exercise his option of standing upon his notice of dishonour and treating the bill as dishonoured by non-acceptance, or of taking the qualified acceptance and notifying it to the drawer and indorsers, who will then, unless they expressly dissent from the variation, be taken to have assented to it.

But supposing none of these precautions were taken at the time and a bank found itself the holder, either in its own right or for collection, of a bill accepted in this ambiguous way, then, it being too late to take any steps for maintaining recourse, there is nothing left to be done except to present for payment on that day, because either it is the last day of grace upon the original drawing, or, if the bill has been accepted contrary to its tenour, though the drawer and indorsers may have been released, yet the effect of the acceptor specifying a day in such case is to disentitle him to grace. If, on the other hand, the bill had been accepted payable on the day the bill would mature *exclusively* of days of grace ; here, in strictness, the acceptor having accepted payable on the day indicated in the drawing cannot be said with certainty to have varied the drawer's order. On the other hand, he has undoubtedly specified the day, and so might be held to have disentitled himself to grace. The practice, in this dilemma, is to present on the day specified in the acceptance, and if the answer is "not due" or "present again," or to that effect, then to note the bill and give notice of dishonour, and present again three days later. You will find these awkward acceptances considered in the "Questions on Banking Practice," 4th edit., Questions 128, 131, 132, 135.

(3.) Under this head of days of grace you will not fail to notice how the incidence of the due date is advanced a business day in case it would otherwise fall on a common law holiday, and postponed a business day if it would otherwise fall on a statutory bank holiday. This is quite a banker's point, because it was proposed in committee to make all the bills, in either case, fall due on the previous business day or all fall due together on the succeeding business day.

But the bankers entreated that the incidence might be divided, so that if a common law holiday and a bank holiday fell together, instead of having three days of bills all payable on the previous business day, or all crowded into the succeeding business day, the pressure might be divided between the previous and succeeding business days.

(4.) You will notice also the provision that month means calendar month, so that you are not concerned with whether it is a longer or a shorter month, and when February is one of the months, the noteworthy consequence is that four bills drawn, say at two months date, on the 28th, 29th, 30th or 31st of December, 1894, would become "due and payable" on the 3rd of March, 1895, and if such bills were drawn on those days of December in a year preceding leap-year, the first bill would, of course, fall due on the 2nd of March, and all the other three on the 3rd of March following.

Sum certain.

5. Sum certain.—If a person were to show you a bill payable *after sight* or *on demand* for £150, with interest at say 6 per cent., would not you be disposed to say the stipulation for interest rendered uncertain the amount which the drawee would have to pay if he accepted? You might well say "there is a fatal uncertainty here; this can be no valid bill, for the reason that no one can predict when it will be presented for acceptance or payment, and until it is presented the interest cannot be reckoned." We should know, of course, when the interest *began* to run, because, in such a case, unless the instrument otherwise provides, it runs from the date of the bill, and, if the bill is undated, from the issue. This is laid down in section 9 (3) which we noticed under the head of issue. But we cannot tell what date to reckon *to* till presentment fixes the maturity. The doubt which would thus reasonably arise in your minds is expressly allayed by the Act itself, which in section 9 (1) (*a*) says the sum payable is not to be deemed the less a sum certain because it is required to be paid "with interest." You might still be reluctant to give up any more certainty than you could help, and you might say "there must at least be a statement of the *rate* at which interest is to be paid." But the Act does not contain any such limitation; it merely says "with interest" and not "with

Interest expressly payable.

S. 9 (1) (*a*).

interest at a specified rate." Moreover, the bare words "with interest" have, as long ago as 1826, been the subject of judicial interpretation, and it was then decided that a bill expressed to be payable "with interest" bore interest at 5 per cent. per annum. It is well to have gone a little into this question of interest *expressly* made payable in the bill because it stands upon a different footing from the interest claimable from and after the maturity of the bill. The latter kind of interest is not claimable as part of the money payable in *performance* of the acceptor's contract, but as damages arising from the *breach* of it. You must look therefore at the compact section inserted, under the head of liabilities of the parties, for the rules regulating such interest as is only claimable from and after dishonour by way of damages. With regard to such interest, it is in the discretion of the jury or (if the case is tried by a judge alone) of the judge, to award or withhold it either wholly or in part, or to give it at a different rate from that (if any) specified in the bill. Section 57 (3).

Interest as damages.

S. 57 (3).

You will also notice in section 9 (1) that the sum payable is a "sum certain" although payable by stated instalments, and even though, upon default in payment of any instalment, the whole is to become due. In like manner, making the bill payable at an indicated rate of exchange, or a rate of exchange to be ascertained as directed by the bill, will not prevent the sum payable from being a "sum certain," within the requirements of the definition, Every bank official knows that if the bill itself raises a doubt as to the sum payable, by stating one sum in figures and another in words, it is to the words that effect is to be given. This rule which appears in section 9 (2), settles the question so far as cheques are concerned, because they are payable on demand, and the stamp duty on bills payable on demand is uniformly one penny, whatever the amount. But on a bill other than one payable on demand, however clear the words are, it will be necessary to see that the amount named in the words does not exceed the amount which the stamp will cover. If it does, the words render the bill invalid by contravening the Stamp Act.

S. (9) (1) (b) (c) (d)

S. 9 (2).

In money. S. 3 (2). Not goods or services.

6. In money.—If the order is for goods, it is not a bill of exchange within the definition. And if the instrument orders any act to be done in addition to the payment of money, it is not a bill of exchange. Section 3 (2).

To or to order. S. 8 (4) (5).

7. To, or to the order of.—Formerly if a bill was made payable to a particular person, without more, it was payable to him only, but now unless the bill contains words prohibiting transfer or indicating an intention that it should not be transferable, a bill is equally payable to the person named or to his order at his option, whether it be in the form "Pay AB" or "Pay to AB or order," or "Pay "to the order of AB" (without saying pay to AB). This is the combined effect of section 8, sub-sections (4) and (5), and it is important for young bankers to have chapter and verse for these new provisions, because the old doctrine that, without words of negotiability such as "or order" or, "or bearer," the bill was payable to the specified payee only, was thoroughly understood by those that knew their work best among the generation who learnt their banking before 1882; and the old rule, in this case (as in the matter of blank followed by special indorsements, to which I am coming shortly,), dies hard.

Specified person. S. 7 (1).

8. A specified person.—Bills, other than cheques, are not often made payable to bearer, and, unless so made payable, the payee must be named or otherwise indicated therein with reasonable certainty. Section 7 (1).

Alternative payees. S. 7 (2).

Here, as in the case of drawees, two or more persons may be specified jointly, but, unlike the case of drawees, alternative payees or one or more of several payees may be named or indicated in the bill. This, again, is a new provision, but it is not one of the points of banking practice such as I have just referred to. The reason of the change is pretty clear I think. For while two or more *drawees*, in the alternative or optionally, would give rise to confusion and delay in presentment, no such disadvantage can arise from enabling the acceptor to discharge his liability by paying whichever of several applies in due form for payment of the bill.

Officer for time being.

Another improvement introduced by the Codifying Act is that a bill may now be made payable to the holder of an office for the

time being. In 1866, the Court of Queen's Bench was called on to decide upon the validity of an instrument in these terms :— "On demand, I promise to pay the Trustees of.....Chapel or "their Treasurer for the time being, £100." And it was contended on behalf of the maker that it was void for uncertainty in the payee. It was not perhaps a very meritorious defence, and the Court held him to his promise on the ground that the Trustees were a sufficiently certain body, and they were the real payees, the Treasurer being merely their agent (and not an alternative payee which at that date would have been inadmissible). But now no such defence would arise and the indorsement either of the Trustees themselves or of their Treasurer for the time being, would be a sufficient indorsement or discharge. I mention this case because it illustrates both the alternative payees and the holder of a post for the time being.

Drawer or drawee, payee. S. 5 (1).

Either the drawer or the drawee may also be the payee of the bill. Section 5 (1).

Fictitious payee. S. 7 (1).

Moreover the payee may be a fictitious or non-existing person altogether without invalidating the bill. Before the Act, such a bill might, as against the drawer or other party who became a party knowing the fictitious nature of the payee, have been paid to bearer. The liability of these parties other than the drawer was rested on the doctrine of estoppel and you will readily see that, in the absence of misconduct or negligence, a person could not be held estopped or precluded by something not involved in the contract he entered into, and which was unknown to him at the time when he contracted. But though the doctrine of estoppel could not fix an acceptor or indorser, without knowledge, it did not follow that it was commercially desirable that his liability should depend upon his knowledge, or that there would be any hardship in binding him to pay the bill whether he had knowledge of the payee being fictitious or not. This would depend upon the nature of his relation to the other parties on the bill. Now, so long as the acceptor is entitled to debit the drawer with the amount of the bill, it does not matter to him whether he pays it to one person or another and so long as he is safe in making the payment

and has the drawer's account to charge it to, his knowledge or non-knowledge that the payee is fictitious or non-existent is immaterial. But nothing short of an act of parliament would suffice to make the bill payable to bearer as against the acceptor, unaware of the payee being fictitious, because as I have said the existing law rested on estoppel and estoppel was powerless to carry his liability any further. Unfortunately for the acceptor in the great case of *Vagliano* v. *the Bank of England*, in which this point first arose after the Act of 1882, he had no drawer to debit with his payment of the bill because the *drawer's* name had been forged, as well as a fictitious payee inserted, and therefore he became a loser of £71,000 by the fraud of his clerk, besides costs and expenses, upon its being held by the final court of appeal that the bill had become payable to bearer, or at all events that his bankers were entitled to debit him, under the special circumstances of the case, with amount of the bills paid by his bankers the Bank of England upon his genuine acceptances and in accordance with letters of advice from him.

Vagliano v. Bank of England.

I am not attempting now to examine with anything like the thoroughness it deserves, this great case, every line of which, from the masterly treatment it received from the judge of first instance, to the proceedings in the Court of Appeal and from thence to the last line of the last delivered opinion in the House of Lords, is well worth reading. But I think you will understand the case better if you bear in mind the *two* frauds of which the acceptor was the victim, the one which put forward a false payee and the other which put forward a false drawer. And you will I think see that if it had not been for the latter fraud he would have been entitled to debit a genuine drawer's account with the payments made by him or on his behalf by his banker. Now the acceptor is held bound to know the handwriting of his drawer, so that the fraud which really made him lose that enormous amount of over £70,000 was a fraud as to the consequences of which, in any other case, he would have had no ground for devolving any responsibility upon his bankers.

The judgments are rested upon various grounds, some of which turned upon the precise dealings of the parties, and therefore are

not an interpretation of the Act before us. The two grounds of law which are of general applicability are (1) that a payee is a fictitious person within the meaning of section 7 (3), though he is a real existing person (and though his name has been selected on that very account to facilitate the commission of a fraud?); (2) that where the payee is a fictitious or non-existing person within the meaning of that sub-section it is no longer necessary in order that the bill may be payable to bearer, as against the acceptor, that he should have accepted with knowledge of the fictitiousness or non-existence of the payee.

S. 8 (1).

The next section (section 8), opens with a sub-section which must be read with extra care, for it contains the expression "not "negotiable." "Where a bill contains words prohibiting transfer "or indicating an intention that it should not be transferable, it is "valid as between the parties thereto, but is not negotiable."

Use of "Negotiable" as "transferable."

Now, here we see the advantage of getting a clear idea, at starting, of what negotiability means in its widest sense. You remember that free transferability by delivery or by indorsement and delivery, was one of the elements of negotiability, and if this quality of transferability is struck out, the instrument is not negotiable. Before we come to crossed cheques, however, in connection with which you will meet with this expression, "not "negotiable," implying that the *other* element of negotiability has been destroyed (viz. the indefeasible title), we shall have passed through those provisions of the act in which "negotiate" is used in the narrow sense of transfer from one person to another in such a manner as to constitute the transferee the holder of the bill. So that in the section now before us, section 8 (1), it is equally true to say that the bill (in which *transfer* is prohibited), has become not negotiable in the narrower sense of the word. I believe the confusion which exists in the minds of many well-informed people, and as I shall show you hereafter, even among public officials, as to the effect of the words "not negotiable" as part of the crossing on a cheque arises from this double use of "negotiate" and its derivative "negotiable" in the act itself.

However, forewarned is forearmed. And having possessed ourselves at the outset of the full signification of negotiability, I shall ask you to keep that full signification fresh and vigorous in your minds; because, after treating *negotiate* as synonymous with *transfer* in the central portion of the Act, we shall be in need of the full meaning of negotiable, when we come to "not negotiable" in connection with crossed cheques, which remain perfectly transferable, and are only "not negotiable" in having lost the quality of conferring an indefeasible title upon the honest transferee in due course.

Meantime let us see how a bill may be drawn "not negotiable," (*i.e.* not transferable) in its origin. It must "contain words "prohibiting transfer or indicating an intention that it should not "be transferable." The act at this point gives no example of words which would have this effect. But a restrictive indorsement,
S. 35 (1). we are told further on, section 35 (1), is one which prohibits the further negotiation (transfer) of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof. And the examples given are: "Pay D *only*" (which prohibits further transfer), and "Pay "D for the account of X" or "Pay D or order for collection," which express that the indorsement is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof.

S. 35 (2). (3.) A restrictive indorsement, however, as shown by section 35 (2), may be coupled with words authorising further transfer, and in that case, by (3) of the same section, the restrictive indorsement (which, standing by itself, would strike at the transferability), has the effect of rendering the bill not negotiable in the wider sense of conferring no better title on the transferee than that which the person from whom he took it had.

Now, by analogy to this provision as to restrictive indorsements, we may, I think, safely say that if a bill is *drawn* in such terms as would, in an indorsement, prohibit the further transfer of a bill or render it a mere authority to deal with the bill as thereby directed,

the bill will be drawn not negotiable (*i.e.* not transferable) within the meaning of section 8 (1).

Decroix *v.* Meyer.

It is worth noting here that the acceptor has no right to alter the drawing. In Decroix *v.* Meyer the acceptor of a bill drawn payable to drawer or order, when accepting, struck out the words "or order" and inserted "in favour of drawer only." It was held that the alteration was of no effect, because the mere striking out of the words "or order" left the bill payable to drawer or his order as before, and if anything more than this was intended by substituting the words "in favour of drawer only" this would be an alteration of the drawing itself, and as such wholly beyond the acceptor's powers.

National Bank *v.* Silke.

The case of The National Bank *v.* Silke was also decided on this section and sub-section, and shows that the drawer himself if he wishes to draw a non-transferable bill or cheque under this section must use words unmistakeably complying with its terms. There he drew a cheque payable to C's order and crossed it to the defendant bank, preceded by the words "account of C." Held, that this was not a drawing prohibiting transfer or indicating an intention that the cheque should not be transferable within section 8 (1), nor was it, of course, a crossing "not negotiable" under the provisions relating to crossed cheques. These cases, I hope, justify my endeavouring to get from the section on restrictive indorsements some clue as to what *would* be held to satisfy the terms of section 8 (1) in the absence of any example in the section itself.

Or bearer S. 8 (3).

9. "Or bearer."—We now come to the last words of the definition of a bill of exchange. By section 8 (3) a bill is payable to bearer which is expressed to be so payable, or on which the only *or last* indorsement is in blank.

This is an innovation upon the old rule. Before the Act, and as long as 100 years ago it was held that if a bill drawn payable to order had once, by a blank indorsement, become payable *to bearer*, no subsequent special indorsement was of any avail to deprive it of that quality. The chain of indorsements was broken. There was nothing on the bill to show that the first special indorser after

the blank indorsement was entitled to give any such special order, and acceptors of bills and bankers upon whom cheques were drawn merely looked to see that the indorsements were in order down to the blank indorsement, and after that they treated the subsequent special indorsements as surplusage.

This practice having been firmly grasped by bank officials, is still held with considerable tenacity by the older generation. Moreover, you will still find the old rule laid down in books of good authority on banking and mercantile matters, written or edited by able practical writers whose attention does not happen to have been drawn to this alteration of that cherished rule. Of course, no responsibility attaches to the drawee at the point where the break in the chain of special indorsements occurs, but you will find it necessary to see that, from the point where the special indorsements recommence, they are continued in regular form so far as they appear on the bill.

If the words "or bearer" remain part of the *drawing*, then whatever obligations attach to the parties who, to facilitate the negotiation of the bill, place their names upon it as indorsers, the bill remains, so far as the drawee is concerned, a bearer bill.

Case of need. S. 15.

This concludes our considerations on the provisions exclusively devoted to the drawing of a bill, but in sections 15 and 16 we have clauses common both to drawers and indorsers. By section 15 a drawer or an indorser may insert the name of a person to whom the holder may resort in case of need, that is to say, on the bill being dishonoured. The usual form is "in need," or "in case of need, with Messrs. Robinson for honour of (inserting drawer's or indorser's own name)." But the resorting to the referee in case of need is optional with the holder. The object is not only to preserve the good name of the drawer or indorser, but also to save expense. Because if there is no "case of need" the holder would at once, in case of a foreign bill, protest the bill and draw a redraft at sight for the re-exchange and expenses on his immediate indorser who will probably honour the redraft and at once draw for the amount of this redraft with the added expenses upon possibly a mesne indorser. And perhaps several redrafts (with accumulating

expenses, comprising fees, stamps, cost of protest, act of honour, brokerage on redraft, commission, postages, and so forth) may be piled up before the claim reaches the indorser or drawer, who might have warded off these extras if he had given the holder a reference in need ready to intervene and accept or pay for the honour of the drawer or indorser in question. By section 16 the drawer or indorser may insert a stipulation negativing his own liability to the holder. The words generally used for this purpose are "without recourse," or "*sans recours*." In like manner, either drawer or indorser may waive as regards himself some or all of the holder's duties, *e.g.*, "Notice of dishonour waived." This insertion appears at first sight against the interest of the drawer or indorser, but its object is, like that of the case of need, to save expense in case of dishonour. The drawing having been completed by delivery, you will remember that by section 55, the drawer's engagement is thus stated: "That on due presentment, it (the "bill) shall be accepted, and paid according to its tenor, and that, if "it be dishonoured, he will compensate the holder or any indorser "who is compelled to pay it, provided that the requisite proceedings "on dishonour be duly taken."

Without recourse, &c., s. 16.

S. 55. Drawer's engagement.

We have now to consider the acceptance; which the Act defines as "the signification by the drawee of his assent to the order of "the drawer," section 17 (1). A friend of mine, who was called to the bar, but afterwards found more congenial occupation elsewhere, complained bitterly of the legal text books, because, as he said, they contained nothing but self-evident propositions, with a reference, in the foot-note, to one or more decisions in support of each of them. And, no doubt, nothing but a resort to the references themselves will, in many cases, show that knotty points have been resolved by the simple and apparently obvious statements of principle embodied in the text itself. Section 17 (2) (*a*), tells us that an acceptance must be written on the bill, and signed by the drawee. It adds, "The mere signature of the drawee is "sufficient." Well, you might be disposed to say it was hardly worth while to put that into an Act of Parliament. But I saw it stated, only the other day, in a recent edition of an excellent work

Acceptance, s. 17 (1).

S. 17 (2) *a*).

on banking, that a *foreign* bill may be accepted verbally or by letter. And when that statement appeared in the first edition it was true; because the Act at that time in force was the 1 and 2 Geo. IV, c. 78, which enacted that no acceptance of any *inland* bill should be sufficient to charge any person unless such acceptance were in writing on such bill, or if there were more than one part of such bill, on one of the said parts. Strangely enough that Act of Geo. IV, was found necessary, although under Statute 3 and 4, Anne, c. 9, s. 5, it was already enacted that no acceptance of any inland bill of exchange should be sufficient to charge any person whatever, unless it be underwritten or indorsed in writing on the bill. Two Chief Justices and a Lord Chancellor had, however, held that under the Statute of Anne a verbal acceptance was (looking at the whole Act) binding, notwithstanding these words. Now you will notice that under the Act of Geo. IV no signature is required, and accordingly under that Act an *inland* bill was sufficiently accepted if the drawee wrote on the bill, "accepted," "presented," "seen," the day of the month, or a direction to a third person to pay it. And with regard to *foreign* bills it was held that a promise written or verbal to pay or accept an existing foreign bill, was of itself an acceptance, but not so a promise to pay or accept a future bill. The whole of the previous decisions were left applicable to *foreign* bills. And you may imagine the litigation which arose as to the effect of what the drawee did with the bill, or said about it, when it was presented to him. A drawee said, "the "bill shall have attention." It was held that he had not accepted, but the defeated suitor was consoled by the assurance that he would have succeeded if he had proved that, by the course of dealing, those words were usually considered an acceptance. Another drawee handed back the bill, saying, "There is your bill, it is all "right;" but he was held not to have accepted. Keeping the bill was, in some circumstances, an acceptance, in others, not. And when the drawee, after refusing acceptance, kept the bill for a long time and then destroyed it, it was held that the destruction of the bill was prevented from being an acceptance, by the fact

that it was preceded by a refusal to accept the bill. Lord Ellenborough, however, was of opinion that it was an acceptance in spite of such previous refusal; and Mr. Justice Abbott, in holding it no acceptance, used these significant words, "I look with "the greatest anxiety at these cases of constructive acceptance, "for every decision of that kind introduces uncertainty upon a "subject where the public interest requires that the greatest "certainty should prevail." Such then continued to be the law as to foreign bills till, in 1856, were passed the Mercantile Law Amendment Acts, 1856, 19 and 20 Vict., c. 60 (Scotland) and c. 97 (England), which by section 11 of the former and section 6 of the latter, enacted that, "No acceptance of any bill of exchange "*whether inland or foreign*, made after the 31st of December, 1856, "shall be sufficient to bind or charge any person unless the same "shall be in writing on such bill, or, if there be more than one "part of such bill, on one of the said parts, *and signed by the* "*acceptor or some person duly authorised by him*." That, you see, places inland and foreign bills on the same footing, and it requires the signature of the drawee; and so we might perhaps expect that no further question could well arise. All went well for many years. But in 1878, a solicitor practising in the County Court of Newcastle-on-Tyne, took the ingenious point that as the bill must now be accepted *and* signed, acceptance must be something *additional* to signature. He was upheld in his contention too, not only by the County Court Judge, but by the Divisional Court on appeal. (*Hindhaugh* v. *Blakey*, 3 C.P.D., 136.) In that case it was held that simply writing the name of the drawee across the face of the bill was not sufficient, without some word or words indicating intention to be bound as acceptor. The decision was given March 2, 1878. The Legislature promptly intervened, and, by an Act passed on the 16th of the following month (41 and 42, Vict. c. 13), declared the effect and meaning of the Mercantile Law Amendment Acts on the point to be, that an acceptance *is not and shall not be deemed to be* insufficient under the provisions of those statutes by reason only that such acceptance consists merely of the signature of the drawee written on such bill.

Mercantile Law Amendment Acts, 1856.

Hindhaugh v. Blakey.

Immediately reversed by 41 and 42, Vict. c. 13.

You see then how full of meaning is this apparently commonplace sub-section s. 17 (2) (*a*), and that it lays to rest or rather continues at rest, controversies which were already rife in Queen Anne's reign and were not settled till some four years prior to its enactment in 1882.

For money only. S. 17 (2) (b).

We saw that the drawer might not call on the drawee to do any other act than pay a sum of money. For the same reason, an acceptance, to be valid, must not express that the drawee will perform his promise by any other means. Section 17 (2) (*b*).

S. 18 (1) (2).

Your knowledge of the way in which bills do their work, and of the manner in which the law allows no technicality to baulk the intentions of the parties, enables you to understand section 18. Although the drawee's signature is put on before the drawer's, or after the date when the bill is due, or after it has been dishonoured by a previous refusal to accept or by non-payment, effect is given to it as an acceptance if it was intended to operate as such. But, of course, where the bill, say a bill at three months' date, is already overdue when accepted, the provision we noticed under section 10 (2) applies, viz., that where a bill is accepted when overdue, it shall, as regards the acceptor, be deemed a bill payable on demand. And with regard to acceptances after a prior refusual to accept, a new provision was inserted in the Codifying Act of 1882, in favour of the holder of a bill payable after sight. It might be said that it is the *presentation* of a bill payable after sight, which fixes its maturity, and it might be asked, which presentment, the time when it was dishonoured or the time when it was accepted? Section 18 (3), settles this in favour of the holder, and entitles him in such a case to have the bill accepted as of the date of the first presentment. Section 19 puts the different kinds of acceptances so clearly, that any laboured exposition on my part would only encumber and obscure this attractive section. I know of no single adjective to describe in one word an "acceptance of some "one or more of the drawees but not of all." Mathematicians have given to aliquot and aliquant, special meanings to suit their own purposes. But we might, perhaps, borrow "aliquot" in its proper sense of "some out of several," and assist our memories by

Acceptance overdue is on demand. S. 10 (2).

Acceptance after dishonour. S. 18 (3).

S. 19.

Id. (2). Qualified acceptances.

thus tersely enumerating the qualified acceptances specified in the sub-section (2), viz.: Conditional, partial, local, temporal and aliquot.

Now there is one rather ensnaring point which should be borne in mind under the head of local acceptances. Unless the acceptance is to pay *only* at a particular specified place *and not elsewhere*, it is a *general* acceptance and not a qualified acceptance at all. So that where a bill is accepted payable at a bankers, it is a general acceptance. It was decided in the year 1820 that such was a qualified acceptance ; and this, of course, would be a most important point, because a holder is not bound to take any but an unqualified acceptance. If a bill is accepted payable at a particular place, then, in order to charge the drawer and indorsers, presentment is necessary at that place. Section 45 (4). But the omission to do so does not discharge the acceptor, who is the principal debtor. Section 52 (1). He has by his acceptance said he will pay at the particular place named, but he has not said he will pay there only and not elsewhere. Now, in order to charge the sureties, it is reasonable that the creditor should (unless excused) endeavour to obtain payment at the place which the principal debtor has, in his acceptance, declared to be the most convenient place, or at all events a convenient place for him to pay. But the acceptor has not said he will *not pay elsewhere;* so that, as between him and the holder, the bill is still payable generally, and whether presented for payment or not. Section 52 (1).

S. 45 (4).

S. 52 (1).

But supposing the drawee accepts payable, for example, at the St. Clement's Bank *only*, he thereby, as you will at once see, makes presentment at that bank a condition precedent of his liability, and this is a local qualification and the acceptance is a qualified acceptance, because it varies the effect of the bill as drawn. Omission to present at that place would not merely have the effect (if not excused) of discharging the sureties, but would prevent the principal liability, viz., that of the acceptor himself, from arising. But even in this case a mere omission to present at the specified place on the day of maturity would not discharge the acceptor, because if the acceptor intends to make it a condition precedent that the bill shall not only be presented at the place

S. 52 (2).

specified, but also that it must be there presented *on the day that it matures*, he must insert an express stipulation to that effect in his acceptance. Section 52 (2).

You see how much more it takes to discharge the principal debtor than it does to relieve the merely collateral liability of the sureties.

Duty of holder taking qualified acceptance.

Now it is the same regard for sureties that explains the provisions as to the holder's position when he is unable to obtain an unqualified acceptance. The drawer, and the indorsers already on the bill, have engaged to guarantee an out and out promise on the part of the acceptor to pay the amount specified in the drawing. But if the acceptor is going to impose terms and conditions and limitations, the effect will be to alter the contract behind the back of the sureties, and, as you know, this would release the sureties from liability altogether. The holder therefore is not bound to take a qualified acceptance and so lose his hold upon drawer and indorsers. But, on the other hand, it is not in the interest of commerce that he should be obliged in all cases to refuse such an acceptance as the drawee is willing to give. We

S. 44 (1).

find, therefore, that by section 44 (1) the holder may refuse to take a qualified acceptance, and, if he does not obtain an unqualified acceptance, may treat the bill as dishonoured by non-acceptance, and his proper course is at once to give notice of dishonour. If the drawer or an indorser has authorised the holder to take a qualified acceptance, or if he subsequently assents thereto, the holder does not forfeit his claim, against the sureties so assenting, by taking the qualified acceptance.

But supposing a holder elects to take the qualified acceptance, and has no such prior assent from the drawer and indorsers, he should at once give notice of the qualified acceptance to the drawer and indorsers. The effect of his giving such notice is, in the case of a partial acceptance, to preserve his recourse against the drawer

Id. (2).

and indorsers—section 44 (2)—and, in the case of any other qualified acceptance, to throw on the drawer and indorsers the necessity of expressing dissent to the holder within a reasonable time in order to release themselves from their liability upon the

Id. (3).

bill according to its modified tenor—*Id.* (3). If a foreign bill is

accepted as to part of the amount it must be protested as to the balance.

Blank acceptance. S. 20.

We have already noticed the effect of giving a blank acceptance in considering section 20, as to incohate instruments and blank signatures. The subject of delivery is dealt with in the act at the close of the provisions devoted to acceptance, because, though delivery is a subject common to all the contracts on a bill, whether drawing, acceptance or indorsement, there is, in the case of acceptance, a special substitute for that delivery which is, as a rule, necessary to complete each of the contracts on a bill. Delivery, we have seen, means transfer of possession, actual or constructive, from one person to another (section 2). And by section 21 (1), every contract on a bill is incomplete and revocable until delivery of the instrument in order to give effect thereto. But the same section goes on to say, that where an acceptance is written on a bill, and the drawee gives notice, to or according to the directions of the person entitled to the bill, that he *has* accepted it, the acceptance then becomes complete and irrevocable. And you will remember that in dealing with the presumptions existing in favour of the validity of bills, we noticed that, although (1) as between immediate parties questions might be raised as to the authority or conditions under which delivery was made, yet (2) the mere fact of the bill being no longer in the possession of a party who has signed it, creates a *primâ facie* presumption of a valid and unconditional delivery by him, and that (3) if the bill is in hands of a holder, in due course a valid delivery by all parties prior to him is *conclusively* presumed. This then concludes our consideration of the acceptance itself, the effect of which is to make the drawee the principal debtor on the bill, and bind him to pay it "according to the tenor of his acceptance." Section 54 (1).

Acceptance completed by delivery or notification. S. 21 (1).

Delivery generally. S. 21 (1) (2) (3).

Acceptor's engagement. S. 54 (1).

We have next to turn our attention to the negotiation (or transfer) of bills. Under this head we shall come to the important subject of indorsement, and after considering the nature of indorsement generally, pass on to certain forms of indorsement in particular. Our concluding enquiries will then be devoted to the subject of cheques upon a banker.

LECTURE III.

OF THE NEGOTIATION OR TRANSFER OF BILLS.

Negotiation of Bills.

In passing from Form and Interpretation, to Negotiation of Bills, we are omitting the heading of "Capacity and Authority," and that of "The Consideration for a Bill." We do so because, as you will remember, we dealt with those two headings at our first meeting and so cleared the way for considering the three contracts of Drawing, Acceptance and Indorsement consecutively. These three contracts are treated in this order in the Act. It is their logical order. And you are too well versed in the commercial and banking uses of bills, to be in any way embarrassed or misled by the fact that, for commercial convenience, the bill, after drawing, is commonly passed from one indorser to another, and does not receive the acceptance of the drawee till it has reached perhaps the final holder who obtains (or gets his banker to obtain), the drawee's signature and payment of its contents at maturity. Of course, if the banker discounts the bill, he becomes the holder of the bill for value, on his own account. If he receives the bill indorsed to him for collection he is the mere agent of the indorser, whose signature on the bill is not a responsible indorsement, by way of negotiating the bill, but a mere authority to the collecting banker to receive the amount on his behalf, and it is a receipt or discharge to the payer of the bill at maturity. Accordingly, the acceptance is thus, for convenience, postponed in some cases. In others, where a bill is drawn in a set (*i.e.*, in duplicate or triplicate), one part is sent forward for acceptance, while another part is circulated and receives the indorsements. Still, in each case the acceptance of the drawee is contemplated in each successive transfer, each holder in succession receiving with the unaccepted bill, or the unaccepted part, the right to call upon the drawee to supply the acceptance, in the one case, or to hand over to him the accepted part, in the other.

We are now about to see the ways in which the property in the bill is passed from one holder to another. This part of the Act might, but for certain verbal inconveniences, have been headed "Transfer of bills," because as you will see by the very first few lines of section 31, "To Negotiate," "Negotiated," "Negotiation," "Negotiable" are, under this heading, used as synonymous with "To Transfer," "Transferred," "Transfer," "Transferable," with the addition of the words "in such a manner as to constitute the transferee the holder of the bill." Transfer, therefore, to be equivalent to Negotiation, must be understood as "transfer from "one person to another in such a manner as to constitute the "transferee the holder of the bill." "Holder" is by section 2 defined as "the payee or indorsee of a bill or note who is in possession of it or the bearer thereof" and, by the same section 2, "bearer means the person in possession of a bill or note which is payable to bearer." So that holder means the payee or indorsee in possession of a bill payable to order or the person in possession of a bill payable to bearer. Of course, if you gave a bill to a friend to hold while you pulled on your gloves, or handed a book to a friend and the bill was accidentally included between the leaves of the book, there would, in a sense, be a transfer from one person to another; but it would not be "in such a manner as to constitute the transferee the holder of the bill." Therefore it would be no negotiation of the bill, if it were only a bare physical transfer of that kind, unaccompanied by any intention to pass the property in the bill to the transferee, or enable him to pass it on to others. You may ask me, here, "Where do you get your idea that it must be with the intention of passing the property?" My answer is, that in this case, as in many others, you must look at the Act as a whole and read together all those sections which bear on the same point. Now, to see how much more than a bare physical transfer is necessary to constitute a negotiation, let us read section 31 (1) (2) (3), then, to make sure, go back to the definition of delivery in section 2, and then look at section 21.

Negotiable in the sense of transferable.

Transfer.

Section 31 (1). "A bill is negotiated when it is transferred

"from one person to another in such a manner as to constitute the "transferee the holder of the bill.

(2) "A bill payable to bearer is negotiated by delivery.

(3) "A bill payable to order is negotiated by the indorsement "of the holder, completed by delivery."

Must be a delivery.

Now, this shows that the transfer which is involved in negotiation must be a *delivery*.

Section 2 does not contribute much to our present object, for it merely says "Delivery means transfer of possession," *actual or constructive*, "from one person to another."

Sub-section 21 (1) is as follows: "Every contract on a bill "whether it be the drawer's, the acceptor's or an indorser's; is "incomplete and revocable until delivery of the instrument," now mark this,—*in order to give effect thereto*. So that the delivery must be a transfer with the intention of giving effect to the contract, whether of drawing, accepting or indorsing, as the case may be. Now in the case of a negotiation by indorsement with delivery and, by analogy, in the case of negotiation by delivery, we may, I think, safely say that to give effect to the contract is to carry out the object of the contract, and that the object of the contract is to transfer the property in the bill to the transferee.

And in the same section, sub-section (2) (*b*), we find that, as between immediate parties, the delivery "may be shown to have "been conditional or for a special purpose only, and not for the "purpose of *transferring the property in the bill*."

So that, understanding "transfer" in the sense of "transfer," qualified by the words "in such a manner as to constitute the transferee the holder of the bill," we may leave out these qualifying words, and say that in this part of the Act relating to negotiation, negotiate is equivalent transfer, and does not in any way involve the second ingredient of negotiability, viz., an indefeasible title conferred by honest acquisition for value.

The fixing in our minds of the voluntary and intentional nature of the transfer necessary to constitute a negotiation must not be allowed for a moment to efface from our memory those principles on which a party to a bill is rendered liable to a holder in due

course, not because he voluntarily and intentionally passed the property in the bill to some immediate party, but in spite of his having had no such intention. In examining the contract of negotiation, we are not concerned with remote parties, but we are concerned with its nature and requirements, as between the *immediate* parties to each particular negotiation. You remember the distinction between immediate and remote parties, and are in a position to see how differently this matter of delivery affects those two classes of contracting parties. Section 21 puts this clearly, thus :—

(2) "As between immediate parties, and as regards a remote "party other than a holder in due course, the delivery—

(*a*) "In order to be effectual must be made either by or under "the authority of the party drawing, accepting or in- "dorsing, as the case may be.

(*b*) "May be shown to have been conditional or for a special "purpose only, and not for the purpose of transferring "the property in the bill.

"But if the bill be in the hands of a holder in due course a "valid delivery of the bill by all parties prior to him, so as to make "them liable to him, is *conclusively* presumed.

(3) "When a bill is no longer in the possession of a party who "has signed it as drawer, acceptor or indorser, a valid and "unconditional delivery by him is presumed *until the contrary is "proved.*"

So that, in any case, even between immediate parties, if a person has signed a bill and is no longer in possession of it there is a *rebuttable* presumption that he intentionally and unconditionally delivered it ; and, if he says he did not do so, then it lies on him to prove how it comes to have passed out of his possession. While, by the proviso of the previous sub-section, a holder in due course has the presumption, on this head, *conclusively* in his favour. Having recalled, thus briefly, the exceptional liabilities under which parties to bills may find themselves to a holder in due course, and the doctrines of commercial policy upon which

exceptional advantages are given to honest holders for value of bills, we may return to the Contract of Negotiation itself, as it affects the *immediate* parties.

Transferor by delivery.

A bill payable (either originally or by blank indorsement) to bearer is negotiated by delivery. And the result of this transfer is that, as the transferor has not to put his name on the bill, he incurs no liability *on the bill*. He incurs, of course, a liability towards his immediate transferee, but he does not, as does a drawer or an indorser, guarantee the acceptance or payment of the bill, and remain contingently liable to attack by any of the subsequent transferees of the bill, who, on its dishonour, may select him as a desirable surety to fall back upon. The transferor by delivery has a section to himself, under a later heading, to which we have now so frequently resorted, that we have nearly explored it, by references incidental to other portions of the Act. I refer to the "Liabilities of the Parties." Under that heading is described the position of the person who negotiates a bearer bill.

His liabilities. S. 58

Section 58 (1) "When the holder of a bill payable to bearer "negotiates it by delivery, *without indorsing it*, he is called a "transferor by delivery.

(2) "A transferor by delivery is not liable on the instrument.

(3) "A transferor by delivery who negotiates a bill thereby "warrants to his immediate transferee being a holder for value," three things, viz. : (1) "That the bill is what it purports to be ;" (2) "That he has a right to transfer it ;" and lastly (3) "That, "at the time of transfer, he is not aware of any fact which renders "it valueless."

So that, if the bill turns out to be a forgery, or is dishonoured on the ground of its being, in any other way, different from what it purports to be, the immediate transferee can bring an action, not on the bill (for the amount of the bill, with consideration presumed), but *on the consideration*, *i.e.*, upon the circumstances constituting the contract between himself and the transferor by delivery. And in this action, the transferee, relying on the implied warranty that the bill was what it purported to be, can, on proof of the consideration and that that warranty was broken, recover damages for the

breach of warranty. This you will see, is a very different claim to make out, from a claim simply on the bill. The same remark applies to an action for breach of either of the other two warranties : viz., the warranty of title, and the warranty that at the time of transfer, the transferor had no knowledge of any fact rendering the bill valueless.

The difference between the position of an indorser (who is a party *on the bill*, and so a surety to all subsequent parties, for the acceptor and all parties prior to himself), and that of a transferor by delivery, may be further illustrated in this way. Suppose the seller of goods took a bill or cheque payable to bearer in payment for them, it would not at all follow, from the fact of the cheque being dishonoured, that the seller of the goods could come down upon the person who handed him the bill or cheque, for the amount or any other damages. The seller of the goods would have either to make a case under one of the above three warranties or else show that there was something special in the terms on which he took the bill or cheque. If on the other hand the payment for the goods had been made by *indorsing* a bill or cheque to the seller, and the bill or cheque were dishonoured, then, unless the indorsement *expressly* stated that it was without recourse, or contained some similar *express* exemption from liability, it would give the seller of the goods a right of action against the indorser upon his contract of suretyship, upon the bill or cheque itself. It is therefore not too much, I think, to say that, in the absence of special circumstances, a bill to bearer, taken in exchange for goods, is bartered against the goods, not on any guarantee by the transferor that it will be honoured, but for whatever it is worth in itself. This barter is, subject to the warranties above mentioned, (1) of the bill being what it purports to be, (2) that the transferor has the right to transfer it, (3) that at the time of transfer, he is not aware of any fact which renders it valueless. Now, how far do these warranties correspond with or differ from those which would be implied, if, instead of the bill being bartered for goods, it was a case of goods being sold for money ? Some authorities have said that the transfer, without indorsement, of a bill payable to

Warranties of transferor by delivery of bill.

bearer is equivalent to a *sale* of the bill. If that were a strictly accurate description of the transaction, and if bills were goods, we should have to look at the Sale of Goods Act of last year (1893), at sections 10 to 14, where the conditions and warranties applicable to a sale of goods are set out; but by the interpretation clause of that Act, section 62, "Goods include all chattels, personal, *other than* "*things in action and money*, and, in Scotland, all corporeal movables "except money." So that a bill seems not to be the subject of sale under that Act. Comparing, however, the warranties arising on a sale of goods, under the Sale of Goods Act, 1893, with the warranties provided in the Bills of Exchange Act, 1882, in the case of transfer, without indorsement, of a bill payable to bearer, we find in respect of the first, viz., that the bill is what it purports to be, there is no such general warranty of the goods, because *Caveat Emptor* is, in the case of a sale of goods, the maxim by which, as a general rule, the law stimulates the vigilance of buyers in this country. With regard to the second, viz., the warranty of the right to transfer, this, practically, is applicable to the sale of goods. And, with respect to the third, viz., that the transferor is not aware of any fact rendering the thing sold *valueless*, this does not apply, in terms, to goods sold, but, practically, for a person to sell goods for a substantial sum, *knowing* them to be absolutely valueless would go a long way to constitute a fraud, such as would avoid the transaction, if set up promptly by the party deceived. In such a case, what was actually said by the seller, to induce the purchaser to buy, would be judged by what was kept unsaid, and would be tested by the knowledge he was keeping to himself, and the probabilities are that a sufficient misrepresentation would be shown to avoid the transaction for fraud. The advantage of going a little into these matters is that it shows the significance of such a section as section 58, so compact, yet so full of meaning, and prevents your sliding over it without appreciating its bearing upon the portion of the Act with which we are more immediately concerned. And before leaving the heading of "liabilities of the parties," I propose that we should dispose of yet another of its

Compared with those of seller of goods.

sections, as germane to the subject of transfer and indorsements, viz., section 56.

We have been looking at the position under section 58, of a transferor by delivery, *i.e.*, a holder of a bill payable to bearer who negotiates it by delivery, *without indorsing it.* Such a holder could of course indorse it, although it did not, in strictness, require indorsing to negotiate it. And if he did so, then, being *a holder*, he becomes an indorser in the full sense of the word. But now suppose a person, not the holder, but a stranger to the bill (though probably no stranger to some of the parties) were, for the purpose of giving currency to the bill, to put his name on the back of it. Not being a holder, he would not be, strictly speaking, an indorser.

Holder may render himself liable as indorser of bearer bill.

He would be what lawyers call a quasi-indorser. The section which defines his position is as follows: section 56. "Where "a person signs a bill otherwise than as drawer or acceptor, he "thereby incurs the liabilities of an indorser to a holder in due "course." This section is wide and sweeping in its terms, and you will do well to notice the closing words "to a holder in due course."

Stranger to bill signing becomes quasi-indorser. S. 56.

As regards the immediate parties to the transaction, his liability will turn upon what were the circumstances under which he became a signatory to the bill; but if he signs the bill, otherwise than as drawer or acceptor, he is presumed to do so with the object of furthering its negotiation, and is held to his signature, as if he were an indorser, and had intended his signature to induce subsequent parties to advance money or give other value for the bill.

But you must not let the generality of the terms, in which this section is expressed, cause you to forget the important distinction between a responsible indorsement and a signature which is a mere receipt or discharge, not placed on the bill to further its negotiation, or, in the barbaric phrase of medieval latinity, *animo indorsandi.* In 1860, an interesting case came before the Court of Common Pleas; Keane *v.* Beard. The defendant Beard was holder of a cheque drawn upon the Union Bank of London,

Distinction between mere receipt and responsible indorsement.

Keane *v.* Beard.

payable to himself (Beard) or bearer. He indorsed it to one George Lewis, who transferred it, by delivery, to Plaintiff. It was dishonoured. Plaintiff gave notice of dishonour to Beard, and sued him on his indorsement. Beard's counsel demurred, on the ground that it was a bearer cheque, and that Beard's signature was not required to negotiate it, and did not operate as an indorsement, and ought not render him liable as an indorser. The Court complimented the counsel upon his lucid and exhaustive argument, and decided against him. Lord Chief Justice Erle, and Justices Byles and Keating held the defendant liable as an indorser. In the course of his judgment Mr. Justice Byles said: "It is true that a man's name may be, and very often is, written "on the back of the cheque or bill without any idea of rendering "himself liable as indorser. Indeed, one of the best receipts is "the placing on the back of the instrument the name of the "person who has received payment of it. Such an entry of the "name on the instrument is not an indorsement. So a man "frequently puts his name on the back of a bank note. In all "these cases the act of writing may be an indorsement or not "according to circumstances." That is in the Eighth Volume of Common Bench Reports, New Series, at page 382. And in the Law Journal Report of the same case, His Lordship adds: "The "writing must always be done *animo indorsandi* in order to make "it an effectual indorsement to bind the indorser." (29 L. J., C. P., 287).

Retrospect

We have now noticed the position of the transferor by delivery of a bill payable to bearer. And we have seen that if, in spite of the bill being negotiable (transferable) without indorsement, the holder indorses it, he becomes an indorser in the true sense of the term. If any person not a holder puts his name on the bill, otherwise than as drawer or acceptor, we have seen that he thereby incurs the liabilities of an indorser. And we have guarded against the generality of this section leading us to forget that there is a class of signatures other than those of a drawer or an acceptor, which, nevertheless, do not carry the liability of an indorser, viz.,

those mere receipts and discharges which were alluded to in Keene *v.* Beard.

Incomplete negotiation of a bill to order.

Suppose now that a bill payable to the holder's order is negotiated. Of course, the complete method of doing so is for the holder to indorse and deliver it to the transferee. But suppose he omits to endorse it, and the transferee, having parted with value for it, finds it useless in his hands for want of the transferor's indorsement. It is pretty obvious that the sensible thing to do would be to request him to supply the omission, and, of course, in the majority of cases, the request would be no sooner made than complied with. It is useful, however, to know that if, having got his money, the transferor were so careless or so unscrupulous as to leave his transferee in the lurch in this way, the transferee is not confined to requests, but may, under section 31 (4), compel the transferor to complete the "negotiation" by indorsing the bill. You may be thinking that one man might take a bill to the transferor, but that ten could not make him indorse it. Well, if it came to that, the Court could be asked for an order directing him to indorse it, and, if he neglected or refused to comply with the order, the Court might then nominate a person to indorse it, and the bill so indorsed would, by the express terms of the Judicature Act, 1884, section 14, operate and be, for all purposes, available as if it had been executed by the person originally directed to indorse it. A transferor, no doubt, might refuse to add the indorsement on the ground of some dispute arising between him and the transferee, and if there was any serious issue of that sort it might have to be tried out before any such summary proceedings would be countenanced by the Court. But the power of the Court to nominate a person to indorse, in lieu of the person to whose order the bill is payable, is worth knowing of, because, in the first place, it would get the transferee out of a very helpless plight, and secondly, you, as bankers, might some day, among the indorsements that come before you, find an indorsement by order of the Court, made by one person on behalf of another who was the proper party to indorse according to the purport of the bill, and you would not otherwise understand what it meant. There are

Omission to indorse.

S. 31 (4).

Judicature Act, 1884, s. 14.

How to compel indorsement.

several matters which a holder is empowered to fill in for himself when the proper party has omitted to do so. And we have seen how, as between such holder and an immediate party, the question as to whether he rightly filled up the omission may be raised, but is a sealed question if the bill has passed into the hands of a holder in due course, who is entitled to enforce the bill as it stands.

But the sub-section we are now dealing with, section 31 (4), shows that however unrighteously the transferor's indorsement is withheld from the transferee, the proper remedy is not to supply the omission by signing on behalf of the recalcitrant transferor, but to compel the transferor to sign it or submit to its being signed by the order of the Court, with probably the penalty of paying the costs of the application.

What the transferee has power to compel under these circumstances is merely the indorsement necessary to pass the title to the bill. He cannot compel the transferor to give him an indorsement carrying a personal liability. So that it would be no excuse for a transferor's refusal to indorse if he were to say that it might subject him to a claim as surety on the bill, and that *e.g.*, this obligation to indorse was claimed against him as executor of the person who, if he had lived, would have been the proper person to indorse, and that he (the executor) had no assets to meet the liability. The answer to such an objection would be : "You can indorse the bill in such terms as to negative personal liability."

S. 31 (5). Section 31 (5).

We have already learnt, from section 16, that not only any drawer, but also any indorser may insert an express stipulation negativing *or limiting* his own liability to the holder. And one method of negativing liability is provided by section 26 (1), which says that if a person signing as drawer, indorser or acceptor, adds words to his signature indicating that he signs for or on behalf of a principal or *in a representative character* he is not personally liable thereon.

The words "or limiting" which occur in the section (section 16) conferring on drawers and indorsers the general power to protect themselves, are not in section 31 (5) ; which merely empowers a

party to negative personal liability. But if a person acting in a representative capacity negatives personal liability he, in effect, thereby limits his liability to such funds as have come into his hands as representative and are still available for satisfaction of the debt.

Indorsement generally.

Section 32 lays down the requisites of a valid indorsement, but the first three only of the six sub-sections lay down requisites, so that it is not so formidable a section as it looks. The last three are indulgences rather than requirements. What then are the three compulsory requirements ?

Requisites of a valid indorsement S. 32 (1) (2) (3).

The first is that it must be written on the bill itself and signed by the indorser. And then, as if to anticipate the point taken as to acceptances in Hindhaugh *v.* Blakey, the statute promptly adds :—"The simple signature of the indorser on the bill without "additional words, is sufficient." An allonge or a copy, if the bill is issued or negotiated in a country where copies are recognised, may bear the indorsement, as such allonge or copy is treated as part of the bill itself.

1. Signed, on bill.

Secondly. It must be an indorsement of the whole bill. The indorser must not indorse for a part only of the amount, or indorse to two or more indorsees severally. But it was decided nearly two hundred years ago, that if the holder acknowledged receipt of a part of the sum payable he could indorse the bill for the *balance* unpaid, but this is really an indorsement of the whole bill inasmuch as it is an indorsement of the whole outstanding amount of the bill.

2. Of whole bill, to same transferee.

And, thirdly, where a bill is payable to the order of two or more payees or indorsees, who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

3. Two or more, not partners, must all indorse as a rule.

You may here note that this same necessity of respecting the separate and distinct existence of several parties, not united in interest as partners, is declared with regard to presentment for acceptance, presentment for payment, and notice of dishonour. Thus :—By section 41 (1) (*b*), "where a bill is addressed to two or "more drawees, who are not parties, presentment" (for acceptance), "must be made to them all, unless one has authority to accept for

Similar rule as to several parties in other cases.

S. 41 (1) (*b*).

"all, then presentment may be made to him only." By section
S. 45 (6). 45 (6), "when a bill is drawn upon or accepted by two or more "persons, who are not partners, *and no place of payment is specified*, "presentment must be made to them all." Nothing is said here about authority of one to pay or refuse for all. It cannot, however, be intended that the holder is to go on presenting for payment after one of them has paid, and if it could be proved that one of them had refused payment and in so refusing was acting as agent for all, the holder would probably be excused from further presenting for payment to the others. But if there is any doubt about being able to prove such authority to refuse payment, then, having regard to the holder's duties towards the sureties on the bill, it would be prudent to present formally to each and all, unless and until one of them paid, and so discharged the bill. Again, by
S. 49 (11). section 49 (11), "when there are two or more drawers or indorsers, "who are not partners, notice must be given to each of them, "unless one of them has authority to receive such notice for the "others."

So much then for the requirments of a valid endorsement contained in the first three sub-sections of section 32. But there still remain three sub-sections, which, though not, strictly speaking, obligatory requirements, are here inserted for convenience as bearing upon what is admissible in respect of indorsements.

S. 32 (4). Mis-spelling or wrong designation may be adopted by indorser.

Sub-section (4) is very important to bankers, because it is an express statutory authority to a payee or indorsee to resort to a mild and inoffensive fiction in order to make the indorsement regular on the face of it, and so justify a banker or an acceptor, in honouring the cheque or bill when presented for payment. It enacts that "where, in a bill payable to order, the payee or indorsee "is wrongly designated or his name is mis-spelt, he may indorse "the bill as therein described, adding if he think fit, his proper "signature." We will return to this sub-section when we come to indorsements in particular.

(5). The next sub-section we have already noticed, among the presumptions in support of the validity and *primâ facie* purport of bills, viz.: that each indorsement is presumed to have been made

in the order in which it appears on the bill, though the presumption may be rebutted by evidence.

The sixth sub-section states that an indorsement may be in blank or special; and that it may also contain terms making it restrictive. Before passing on to restrictive indorsements, we must notice the important change to bankers introduced by section 33, which enacts that if an indorsement is conditional, the condition may be disregarded by the payer. This is an immense boon to bankers who had often no means whatever of satisfying themselves whether the condition had been fulfilled. Section 34 defines blank and special indorsements. It is, of course, a special indorsement that may also be restrictive. An indorsement in blank can hardly conform to the definition of restrictive indorsement given in section 35, because an indorsement in blank specifies no indorsee and renders the bill payable to bearer; so that it certainly does not prohibit further negotiation, nor can it well be a mere authority (to bearer) to deal with the bill as thereby directed, and not a transfer of the ownership thereof. The examples, too, given in section 35, are all special indorsements, "Pay D only." "Pay D for the account of X," and "Pay D or order for collection." Moreover, sub-section 2 of section 35 states that "a restrictive indorsement gives the *indorsee* the "right to receive payment of the bill and to sue any party thereto "that his indorser could have sued, but gives him no power to "transfer his rights as indorsee, unless it expressly authorise him to "do so." And by sub-section (3), "where a restrictive indorsement "authorises further transfer, all subsequent indorsees take the bill "with the same rights and subject to the same liabilities as the first "indorsee under the restrictive indorsement." So that, though section 32 (6), states generally that an indorsement may be made in blank or special, and may also contain terms making it restrictive, we may, I think, safely read it as if it said: "it may, *if special*, contain terms making it restrictive." And being on the alert to notice whenever either of the qualities involved in negotiability, in its widest sense, is impaired, we shall not fail to observe that, wherever in a special indorsement authorising further transfer, you find

(6). Indorsements in blank. Special. Section 34.

Condition may be disregarded by payer. Ss. 33, 34.

Special indorsement may be restrictive.

S. 35.

Restrictive endorsement defined.

inserted terms making it restrictive, you have before you one of the cases in which the bill is rendered not negotiable by giving to the transferee no better title than his transferor had. Because by sub-section (3) of section 35, in such a case, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

S. 36 (1). In section 36 (1) we have already noted that the word negotiable is used as synonymous with transferable, since there are other ways, besides those therein specified, in which a bill, negotiable in its origin, ceases to be negotiable in the sense of carrying with it an indefeasible title when honestly acquired for value. And an excellent example of this is given in the very next sub-section. For by sub-section (2) "Where an overdue bill is negotiated" (transferred), "it can only be negotiated" (transferred), "subject "to any defect of title affecting it at its maturity, and thence- "forward no person who takes it can require or give a better title "than that which the person from whom he took it had." We thus see that an overdue bill, though it remains negotiable in the limited sense of transferable, ceases to be negotiable in the widest sense of the term. When we were reviewing the sections upon reasonable time, we noticed the unreasonable length of time which is mentioned in sub-section (3). This, you will remember, is the sub-section which tells us when a bill, payable on demand, is deemed to be overdue for this purpose of affecting the holder with notice of defects of title, and so depriving him of any better title than his transferor had. It tells us that if a bill payable on demand appears *on the face of it* to have been in circulation for an unreasonable length of time, the person who takes it in that condition, does so at his own risk, even though it has never been presented, and therefore has never become due and payable in the strict sense of the term. In sub-section (4), we recognise another of the presumptions which the law supplies in respect of bills. A holder will not be presumed to have taken the bill after it was due; on the contrary, every negotiation (transfer) is *primâ facie* presumed to have been effected before the bill was overdue. But if the indorsement bears date after the maturity of the bill, this

Negotiation of overdue or dishonoured bill with notice. (2).

When demand bill is overdue to impeach title. (3).

(4).

presumption is rebutted, and the holder has no better title than his predecessor. And by sub-section (5) even where a bill is not overdue, yet if it has been dishonoured, any person, who takes it *with notice of the dishonour*, takes it subject to any defect of title attaching thereto at the time of dishonour. (5).

You can now see the scope of this important section (36). It first states that if a bill is negotiable (transferable) in its origin, it continues to be negotiable (transferable) until it has been (*a*) restrictively indorsed or (*b*) discharged by payment or otherwise. And then, as it were, to remind us that negotiability, in this limited sense, is not co-extensive with that negotiability which is the safeguard of the holder in due course, two cases are mentioned in which a bill may be negotiated, in the sense of transferred ; but under such circumstances that the taker of them will not be a holder in due course and therefore will have no indefeasible title. The first case is mentioned in sub-section (2), viz., that of an overdue bill. And to this case sub-sections (3) and (4) are ancillary. The second case is that of a dishonoured bill, taken with notice of its dishonour, and this case is dealt with in sub-section (5). Now if you turn back to the definition of holder in due course in section 29, you will find that these are precisely the two conditions specified in sub-section (*a*), as two out of the conditions under which the taker of a bill would fall short of the position of immunity to which that privileged person is entitled. They are not the only conditions, because if the bill were incomplete or irregular on the face of it, or if the taker had notice of any defect in the title of the person who negotiated it, he would equally fail to acquire an indefeasible title. And these two cases (as to the bill being overdue and as to its having been taken with notice that it had been dishonoured) are alone treated under section 36, apparently for this reason—that they might co-exist with the most perfect transferability, while incompleteness or irregularity or defective title in the transferor would be, in some though not in all cases, inconsistent with transferability itself. Section 36 analysed.

Suppose it should happen that a bill came back in the course of business to a person as indorsee whose name was already on the

S. 37. Bill negotiated back to former party.

bill as drawer or indorser or acceptor, what would be the position of the person to whom the bill was so negotiated back? If, for instance, he was the drawer and the bill had been accepted and, after several indorsements, was indorsed to him, he would, in his new character of indorsee, be entitled to present the bill to the acceptor for payment, and if it was dishonoured he would, in the ordinary course, have been entitled, as the last indorsee, to sue all the prior indorsers on the bill as sureties for the acceptor. But any of these prior indorsers who was compelled to pay it would be entitled to recoup himself by suing that very person (the last indorsee) in his capacity of drawer (the drawer being as you will remember a surety for the acceptor to all subsequent indorsees). Now, to prevent any such waste of time, trouble and expense, the 37th section provides that though a drawer to whom the bill is thus negotiated back may, with certain limitations, re-issue the bill and indorse it away while it is still undischarged, yet if he retains it and presents it for payment and it is dishonoured, he cannot, as indorsee, sue any of the parties prior to himself on the bill because he would in his turn be liable to any of them in his capacity of drawer. And if the person to whom the bill was negotiated back was already on the bill as a prior indorser, then he may negotiate away the bill while it is still undischarged. But if he keeps it in his own hands till maturity and presents it for payment and it is dishonoured, then the only parties whom he can sue as sureties for the acceptor are the drawer and any indorsers earlier than his own first indorsement, because all the indorsers intervening between his own first indorsement and the indorsement back to him would, if sued by him, have a cross-remedy against him in his capacity of prior indorser. And, lastly, if the person to whom the bill is so negotiated back is the acceptor himself and the bill is already overdue or becomes due while in his hands, the bill is discharged; because the right to recover and the primary obligation to pay are combined in the same person, and so extinguished or cancelled one against the other (section 61). But if the bill is still current the acceptor may re-issue the bill and negotiate it away, and he thereby becomes liable, in the event of

(*a*) Former party the drawer.

(*b*) Former party indorser.

(*c*) Former party acceptor.

S. 61. Bill discharged by coincidence of right and obligation.

his dishonouring the bill, to any subsequent indorsees, not only as the dishonouring acceptor, but as indorser of the bill; but he would have no right to sue the drawer or any of the indorsers, because, of course, he is himself the person primarily liable as acceptor, and any person against whom he sought, as indorsee, to enforce payment would be entitled to a cross-claim against him as acceptor. Now this cancelling of cross liabilities helps to explain a section which puzzles people a good deal sometimes. I refer to section 59, on the discharge of a bill by payment in due course. There are various ways, besides payment, in which a bill may be discharged—that is, rendered no longer available as a claim for the payment of the amount for which it was drawn or any part thereof. It may have been discharged by the acceptor becoming the holder at or after maturity in his own right (section 61), or by renunciation under section 62, or by intentional cancellation under section 63, or by material alteration under section 64. But until the drawer or acceptor, or, in case of an accommodation bill, the accommodated party (who, we have seen, is the party primarily liable), has paid the bill at or after maturity, it is not *discharged by payment*. If the drawer or indorser (who are only sureties) pay the bill it is not discharged, and the claim against the acceptor still remains unsatisfied and may, as a rule, be transferred for what it is worth, and subject to the risks as to title of third parties with which we have previously made ourselves familiar. But now comes a sub-section—viz., section 59 (2)—which regulates the position of drawers and indorsers who take up bills by paying the amount. We know that payment by any party discharges those who are merely sureties for the person so paying. And we find it laid down in section 59 (2) that "where a bill is paid by the "drawer or an indorser it is not discharged; but

Other Discharges. Ss. 62, 63, 64.

Discharge by Payment.

S. 59 (2).

Striking out indorsements.

"(*a*) Where a bill payable to, or to the order of, a *third party* is "paid by the *drawer*, the drawer may enforce payment thereof "against the acceptor, *but may not re-issue the bill.*

"(*b*) Where a bill is paid by an indorser, or where a bill payable "to *drawer's order* is paid by the *drawer*, the party paying it is "remitted to his former rights as regards the acceptor or antecedent

"parties, and he may, if he thinks fit, strike out his own and "subsequent indorsements, and again negotiate the bill." Now why cannot the drawer who has paid a bill payable *to the order of a third party* re-issue the bill? It will help us to answer this question if we look at the case in which he *may* re-issue. He may do so if he has paid a bill payable to his own order, that is to say, he may do so on striking out his own original indorsement and all the subsequent indorsements, because his payment of the bill has released all these indorsers who were sureties for him. Their names must no longer be left on the bill if he is going to launch it again, for this would be to give them a fresh term of liability, or, at all events, hold them out to subsequent holders as still liable on the bill. Well, having struck out his own original indorsement and made a clean sweep of the names of the indorsers whom his payment of the bill has discharged, what is the next step which he must take if he is going to re-issue the bill. It is a bill to his own order, therefore to re-issue it he must now indorse it afresh in order to negotiate it again. And it being a bill payable to his own order, he is in a position to do so, for he has a perfect right to incur a fresh liability, and indorse his own name again to the bill. But if the bill had been one payable to the order of a *third party*, that third party would have been the first indorser on the bill, and as such, he has been discharged by the drawer's payment, since he was only a surety for the drawer and acceptor, and one of these principals, namely the drawer, has paid, and so discharged him. Now if the drawer wants to re-issue or negotiate the bill afresh, what is the first step required? It is a bill payable to the order of a third party, and therefore, in order to re-issue the bill, the drawer wants a fresh indorsement by the original payee. But this he cannot have; for he has no right to call upon the original payee to enter upon a second term of responsibility in order to enable him (the drawer) to launch the bill again. I hope, in these remarks, I have succeeded in making clear the aim and scope of this distinction between the power of a drawer to re-issue a bill payable to his own order, and his inability to do so if the bill which he has paid is one originally payable to the order of a third

Re-issuing bill.

party and therefore one requiring a fresh indorsement by that third party in order to start it on a fresh career.

Indorser's engagement, s. 55 (2).

The indorser's engagement is set out in section 55 (2) (*a*).

Certain indorsements in particular.

And now, from indorsement generally, we will pass to the sufficiency of certain indorsements in particular. Now to get an idea of whether anything is sufficient you must understand precisely the purpose which it has to fulfil. The purpose of an indorsement is to pass on the property in the bill, and to do so in accordance with the rights which, upon the face of the bill, have been conferred upon the indorser. I say "upon the face of the bill" because the face of the bill means, for this purpose, the surface of the bill, and includes the back as well as the front surface of the bill. It is necessary, therefore, that the endorsement, to be sufficient, should accurately correspond with and satisfy the order which authorises payment to or to the order of the person making the indorsement in question.

Face of bill includes back of bill.

General rule.

This is the general rule, and in all cases of doubt or difficulty you should bring the matter to this test:—Does this indorsement satisfy the requirements of the order by virtue of which it claims to pass the property in, or give a discharge for, the bill?

And although persons high in authority at your bank may, in the exercise of their discretion, act upon their positive knowledge or even decide upon taking a risk rather than raise a vexatious or troublesome point with a customer, yet I strongly advise you to keep a firm grip on this general rule and err on the side of precision rather than run into any laxity, from fear of appearing too punctilious in these matters. And you will not, of course, for a moment forget that no amount of formal compliance with the order, no amount of regularity and correctness in the purport of the indorsement will counter-balance any knowledge, or even suspicion, that the indorsement is in fact a forgery, or fraudulent, or unauthorised. We are going to consider what indorsements are regular on the face of them, firstly, because in the case of bills, other than cheques, this is about all that a banker can judge of in the multitude of indorsements which come into his hands, many of them in foreign languages, and signed in such a way as to make any attempt to

say whether the signature is genuine quite futile. And as to indorsements, on bills other than cheques, if they should turn out to be forged or unauthorised the general rule which we noticed under Capacity and Authority is remorselessly applied, and the banker pays at his peril. Secondly, because in case of cheques the rule, that a forged or unauthorised signature is an absolute nullity, has received a remarkable relaxation in favour of bankers, and if an indorsement is regular on the face of it, the banker paying in good faith, and in the ordinary course of business is protected. Let us, for convenience, recall the general rule as to forged or unauthorised signatures, and then see the exception in favour of bankers, the history of which we will reserve till we come to cheques as a separate subject hereafter.

Forged or unauthorised signature a nullity, s. 24.

Section 24.—"Subject to the provisions of this Act, where a "signature on a bill is forged or placed thereon without the authority "of the person whose signature it purports to be, the forged or "unauthorised signature is wholly inoperative, and no right to retain "the bill or to give a discharge therefor or to enforce payment "thereof against any party thereto can be acquired through or under "that signature," except by preclusion. This is the rule. Then comes the exception as to (*a*) indorsements (*b*) on cheques.

Exception as to bankers paying on indorsed cheques. S. 60.

Section 60.—"When a bill payable to order on demand is drawn "on a banker and the banker on whom it is drawn pays the bill in "good faith and in the ordinary course of business, it is not "incumbent on the banker to show that the indorsement of the "payee or any subsequent indorsement was made by or under the "authority of the person whose indorsement it purports to be, and "the banker is deemed to have paid the bill in due course, although "such indorsement has been forged or made without authority."

Origin of Exception.

This exception we shall see hereafter, was introduced when, owing to a reduction, in 1853, of the stamp duty on bills to order on demand, it became apparent that cheques (which had thitherto been always drawn payable to bearer) were certain to become payable in large numbers to order, and that the responsibility of bankers, for forged and unauthorized signatures, would be enormously increased by the threatened growth of indorsements to cheques

unless some such protection was afforded. In the Act of 1853 (16 and 17 Vic. c. 59) section 19, the protection was afforded, if the draft when presented "*purported*" to be indorsed by the proper person: and in the section of the Bills of Exchange Act now before us (section 60), the banker to be protected must pay "in good faith and in the ordinary course of business." The words "in good faith" require that the banker should not shut his eyes wilfully to any suspicious circumstance, and, of course, those words would be contravened if the banker had knowledge that the signature was invalid. The words, "in the ordinary course of business" would exclude any case where, though the person on whom the bill was drawn happened to be a banker, yet the transaction had nothing to do with his business as a banker, and they would also require that the payment, besides being made by the banker as such, should also be made with due regard to the ordinary way of conducting the business of a banker. Now, I call attention particularly to this necessity for having regard to what is usual and customary among bankers, because in several matters a practice has become established among bankers and merchants, and has thus become thoroughly regular and legal, although no lawyer, approaching the question as a fresh matter, would have ventured to advise any particular client that such a course was legal or regular. For example, we know from section 32 (3), that, where a bill is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others. And where a dividend warrant is payable on funds standing in the name of two or more persons, not partners, a lawyer advising for the first time, would be apt to say the very reason why this fund was placed in two names, was probably, that the corpus or capital amount should not be dealt with by one person without the concurrence of the other, and the same reasoning should be applied to the proceeds of the fund, and therefore, the dividend warrant being payable to or to the order of the persons in whose names the fund stands, the indorsement, whether by way of transfer or merely as a discharge, should be the indorsement of both or all of

Payment must be in good faith and in ordinary course.

Banking usage all important at this point.

Usage makes law, *eg.*, Dividend Warrants. S. 97 (3) *a*.

them. However, a practice sprang up of paying dividend warrants upon the indorsement of any one of the persons to whom or to whose order it purported to be payable, and this practice has now received the sanction of the legislature, because it was in order to preserve this usage that sub-section (3) (*d*) of section 97 was introduced in committee, into the Bills of Exchange Act, 1882. It enacts that, "the validity of any usage relating to dividend warrants or the indorsement thereof" should not be affected by anything in that Act. So that I have felt it necessary in approaching this part of my subject to remind you that we here leave the beaten track of legal decision or legislative enactment and come upon the, no less interesting because less clearly defined, paths of banking practice. And it seemed to me that in endeavouring to lay down some propositions for your guidance as to indorsements in particular, I could not do better than give you some of the results of a careful perusal and comparison of the questions and answers on this subject in the admirable collection of points, made by Mr. Talbot Agar, with the assistance of Mr. Billinghurst, and other great authorities on the practice of bankers.

"Questions on Banking Practice" a valuable aid.

You probably all know the book entitled "Questions of Banking Practice." The 4th edition, published in 1892, contains no less than 222 answers, given by some of the highest authorities on banking practice, to questions on indorsement alone. Having read every one of those answers, I do not say at one sitting, but in doses of about 60 or 70 at a time, I can honestly recommend their study to you as a means of familiarizing yourselves, in a comparatively easy way, with the sort of questions which are likely to come under your notice in the career which lies before you.

The answers are not in every instance given from precisely the same standpoint, but, making allowance for the fact that every banker is always actuated by the desire to avoid giving needless or vexatious trouble to customers and correspondents, you will find running through them the same general principles. Any one who has made himself master of those points will have given himself a large and varied experience in indorsements in a very short time. One or two of them I have not been quite able to follow.

With regard to answer 380 I assumed at first that it was a deliberate decision of the Council of the Institute. I believed that it was one of the differences of opinion or divergences of practice among bankers, and, as such, one worth calling attention to, because in that answer, an indorsement in the form "*per pro* W. W. Robinson, J. Jones," was stated to be a sufficient indorsement to a cheque drawn in favour of W. Robinson ; whereas, in answer 448, an indorsement in the form L. M. Dymond, to a cheque drawn to the order of L. Dymond, is distinctly condemned as not being in order. But Mr. Billinghurst has shown me that the question 380 is misprinted in the last edition, there being only one W in Robinson's name in the former editions, so that I am happy to say there is not the slightest shadow of a doubt among bankers that the answer to question 448 is the correct one ; and, after this correction, you will not attach any importance to the discrepancy between the payee's initials and the indorsement in the question numbered 380 in the 4th edition.

Well then, let your rule be to see that the indorsement corresponds exactly with the order to pay, and leave the responsibility of sanctioning a departure from literal strictness to those entrusted with a discretion in such matters.

Words of mere courtesy immaterial.

Of course, if words of mere courtesy, as distinguished from words of description, are introduced into the order, they would not, in the regular course, appear in the indorsement, because the indorsement is a *signature* and should be in the form usual and proper for signatures, and should not in this respect follow the wording of the order which speaks of the payee or indorsee in the third person. Thus, Mr., Messrs. and Esquire are merely words of courtesy, and an indorsement of a cheque to Mr. John Jones should not be given in the form "Mr. John Jones," because this is not the usual form for a signature. The indorsement should be "John Jones." Mrs. and Miss are terms of courtesy and therefore, so far, the above observations apply to them, but they are also terms of description, because the former indicates that the person referred to has been married, and is either a wife or a widow ; the latter indicates that she is unmarried. Now in strictness words of description are a part of the order to pay, and

Mr., Messrs., Esquire.

Words of description material.

presumably are intended to identify the person so described, and distinguish him or her from others of the same name and therefore the signature should be followed or accompanied, in strictness, by a word or words of description ; thus, Mrs. John Jones, Lieut-Colonel F. Williams and Miss Jane Thompson, should sign "Annie" (or whatever her christian name is or the initial of it) "Jones, wife" (or widow) "of John Jones." "F. Williams, Lieut.-Col." and "Jane Thompson, spinster," respectively. In like manner "John Smith, junior," in the order to pay, requires "John Smith, junior" as the indorsement. And "Sister Emma" was adjudged in Answer 437 to have rightly indorsed in that form a cheque drawn payable to a member of a Roman Catholic sisterhood by that description and name. I need not say that, where the bank knows the signature of the person referred to, they do not return cheques for the lack of these descriptive words, and possibly some might think it pedantic to ask an unmarried woman to put spinster after her name. I am merely pointing out that, in the absence of such private information, you cannot be said to have an accurate conformity with your drawer's order or with the previous special indorsement unless these words of description appear appended to the signature. Where the indorsement does not purport to be made by the payee or indorsee himself, but by some one on his behalf, the words of courtesy may, of course, be properly used because the agent who signs is speaking of his principal in the third person, so that, to a cheque in favour of Messrs. Brown and White, it is perfectly regular for the indorser to sign "*per pro* Messrs. Brown and White, W. Hunt." And, on the other hand, the omission of the word Messrs. in the indorsement would be immaterial. So much for the distinction between words of mere courtesy and words of description. Now as regards what is a proper signature in each case, let us first of all consider the case of an indorsement by the payee or indorsee in person, and reserve indorsements by agents for later consideration.

Initials should correspond.

If the payee (in which term to avoid repetition I will include indorsee) is an individual, and the surname is preceded by initials, see that the initials correspond. If the christian name is given in

full it is safest, in the absence of positive knowledge, to insist on the name being similarly given in the indorsement.

If order gives Christian name in full, indorsement should correspond.

In saying this, I feel bound to call your attention to Questions 441 and 442 of the Banking Practice, which sanction the indorsement, by the *initial* only of the christian name, before the surname. And possibly as in the case of the dividend warrant, a banking practice might be held to prevail in this respect, which rendered any such scrupulous nicety in this particular matter superfluous. But on principle I see no justification for treating the signature of say H. Smith as a sufficient indorsement to a cheque in favour of Hugh Smith, because (in the absence of private information, as I said before), who is to say that H. stands for Hugh any more than for Henry or Herbert or Hubert or Hercules? Those two answers, moreover, are not very decisive, because the former (441) answers the question, not whether J. Smith is a regular and sufficient indorsement to a cheque payable to the order of John Smith, but whether a draft on demand (it does not say drawn on a banker) payable to the order of John Smith is legally discharged (in the sense of receipted?) if endorsed J. Smith. And the answer is that "in our opinion the indorsement referred to is a valid and legal discharge." And, if the right John Smith signed it, no doubt it is so. The next question (442) is "would the following indorsement be considered correct: Cheque payable to 'self or order' and signed 'William Vale,' but indorsed 'W. Vale' only?" And the answer is "Yes." Now in this case the indorsement is that of the drawer, and the banker is presumed to know the signature of his customer. Consequently, in this case we must pre-suppose that the banker knows perfectly well from his private knowledge that W. Vale is the same person as William Vale. However, unless it can be shown that there is a well recognised usage of bankers to pass the indorsement by initial and surname, where the order to pay is drawn with the christian and surname in full, it would be very unsafe to pass such an indorsement in the absence of knowledge that the signature is in fact that of the payee. The spelling of the name, whether christian or surname, should also be strictly in accord. Ann is not the same as Anne, nor Wilfred as Wilfrid;

Unless contrary usage provable.

Spelling should correspond.

Mary as Marie, Jeffrey as Geoffrey, Helen as Ellen or Elaine, Helena as Eleanor; nor is Macpherson the same as MacPherson, nor McPherson as either of the two last preceding names; nor Elliot as Eliot, and so forth. And there is no pretext for the public to complain of this precision being rigorously exacted by bankers for their own protection, seeing on the one hand the many risks inevitably run by bankers in other respects in carrying on their business, and on the other the important provision inserted in the Codifying Act of 1882 for the assistance of the public when the payee or indorsee of a bill payable to order is wrongly designated, or his name mis-spelt. For in such case, as we saw in considering section 32, by sub-section (4) of that section, the payee or indorsee may indorse the bill as therein described, adding, if he think fit, his proper signature. This provision, extending as it does to mis-description as well as mis-spelling, affords a lawful method for the payee to give proper protection to the banker, and avoid any possibility of the bill being returned to him for an amended or verified indorsement. One case occurs to me in which the payee might have some hesitation. Suppose an unmarried woman were described as Mrs. she would have some difficulty perhaps in describing herself as wife or widow of any particular person, but if she, being described as Mrs. instead of Miss Robinson, could make up her mind to say in the indorsement "Annie Robinson, wife" (or widow) "of John Robinson" she would be legally entitled, under this sub-section, to save all further trouble by doing so; or she might apply to the drawer or indorser, or even accompany the cheque with a letter of explanation to her own or the paying bankers.

S. 32 (4) allows adoption of mis-spelling, &c.

If a bill is drawn, or indorsed, payable to Miss Annie Thompson and she since has married Mr. Johnson, the proper course is to endorse Annie Johnson (*née* Thompson).

Order to pay unmarried woman, since married.

In this case there was no wrong designation or mis-spelling, within section 32 (4), and the above is the recognised method for indorsing in such cases. If, however, after her marriage, a cheque were drawn or indorsed payable to her in her maiden name this would be a wrong designation, and she could under section 32 (4),

indorse "Annie Thompson, spinster," so as to comply with the erroneous form in which the order to pay was given upon the bill.

Of course it would be extremely dangerous to resort to this fictitious signature if there was the slightest doubt as to the person for whom the bill is intended. If a cheque in describing the payee, or indorsee, were very erroneously drawn or indorsed, and the mistake could be easily remedied by referring it to the drawer or indorser for correction, this would be the better course to adopt. But for mere slight inaccuracies, or where a bill with a number of indorsements is indorsed with a wrong spelling or designation of the latest indorsee, and it would be productive of great inconvenience to obtain a new bill or correct the error, the power of making the payee's indorsement regular on the face of it under section 32 (4) is a valuable privilege, and greatly to the advantage both of the public and of bankers.

Executors, one for all.

In the case of executors, as in the case of payees of dividend warrants, we have an exception to the rule, that of two or more payees or indorsees, not partners, all must indorse unless one is authorised to sign for the others. Or perhaps it might be said that one executor is authorised by usage so to indorse. The signature of one executor is accepted: *see* Questions, 535, 541, of the Banking Practice. But an executor must indorse correctly. For example, if a cheque were payable to "the executors of the late John Jones or order," it would not be correct for one of them to indorse "For Self and Co., Executors, Thos. Jones." The indorsement of an executor should show on the face of it *for whom* he is executor. Therefore in the last instance the indorsement should be "For Self and Co., Executors *of John Jones*, Thomas Jones."

Must show for whom Executor.

Trustees, all should indorse.

In the case of trustees, on the other hand, the indorsement of all the trustees is required. Accordingly, in Question 533, you will find that where a cheque was made payable "to the order of the trustees of Mrs. A. B." and was indorsed "*p. pro* The Trustees of Mrs. A. B., J. H.," the indorsement is condemned as irregular on the ground that the cheque should be indorsed by all the trustees. This rule is in no way inconsistent with the fact that,

where authorised by the deed, or other instrument creating the trust, cheques may sometimes be drawn by some only of several trustees but, in any case, the banker is entitled to be satisfied that the power is so expressly given.

Indorsements by agents.

We have hitherto been considering indorsements by the payees or indorsees personally. Let us see what principles apply where the indorsement is vicariously made by one person on behalf of another or others. And first of all let us see what is the force of "per" and "pro," and "per pro," and "by" and "for." "Per" is the same as "by," and "pro" the same as "for," and when either of these is used alone it is insufficient, for it does not show any *authority*. Where a person professes that another is signing "by" him or "per" him, or that he is signing "for" or "pro," another, that may be the construction which he is pleased to put upon the transaction, but you should require something to show how he is authorised in that behalf. "Per pro" is a very different story. This is a distinct statement that it is by the authority or procuration of the principal that the agent affixes his signature.

Per, pro, per pro, for and by.

Authority must be shown.

For example :—

Bill payable to order of A B.

INDORSEMENTS.

(1) *per pro* or *p. p.*, A B.
C D.—Good (shows authority).

(2) A B
by C D
or
A B
per C D.
} Bad (show no authority).

(3) A B
by (or per) C D *attorney*.—Good (shows authority).

(4) For (or pro) A B
C D.—Bad (shows no authority).

(5) For (or pro) A B
C D, *agent*.—Good (shows authority).

The above is the effect of No. 387 of the Questions of Banking Practice, and for the reasons given above, you will find that, in answer 417, where a cheque payable "to J. and J. Wood," was indorsed, "J. and J. Wood, per J. R. and J. T. Wood," the indorsement is condemned as showing no authority; while in No. 481, an indorsement of "The Black Colliery Co., Limited, *per* C. H. Jones, *secretary*," is pronounced correct.

In a *per pro* indorsement, the abbreviation, *per pro*, or the letters, *p. p.*, must immediately precede the name of the principal, because they mean by the authority *of* that person to whose name they are prefixed. So that, where the bill is payable to Brown and Robinson, and the agent who signs is J. H. Smith, it is incorrect to indorse "Brown and Robinson, *p. p.* J. H. Smith," for this implies that J. H. Smith is the principal who has authorised Brown and Robinson to sign for him. But so long as the *per pro* or *p. p.* are prefixed to the principal's name, it is immaterial whether the name of the authorising principal or the signing agent comes first in order, though the practice in England is to place the principal first, and the agent after; while in Scotland it is a common practice to put the agent's signature first and add *per pro* or *p. p.* (of the principal). Thus, on a cheque payable to R. B. Richardson. The indorsement "H. Jones *per pro* R. B. Richardson," is correct and common in Scotland, correct but unusual in England. (*See* Questions on Banking Practice, Nos. 486, 512.) A firm may sign *per pro* for another firm or for an individual person.

Firm may indorse *per pro* for others.

Where a Corporation is the payee or indorsee, you will remember the methods authorised and prescribed for corporations to contract, which we went into somewhat fully on a former occasion. Remember that by section 91 (2) it is *sufficient* if the bill is sealed with the corporate seal; but this provision appears only to have been inserted because a doubt existed whether a bill or note issued under seal was a negotiable instrument. It is not usual for corporations to sign bills by affixing their corporate seal, and the above provision is expressly guarded against being held to *require* any such formality. The usual method is for one of its officers to

Corporation.

Companies.

sign "*per pro* (the corporation)." And in the case of joint stock companies under the Companies Acts, we have already carefully considered the wording of section 47 of the Companies Act, 1862, which lays down the mode in which such a company can indorse by the hand of a person duly authorised. The manner which has become usual is to sign *per pro* the company (giving the name of the company *with strict accuracy*), adding the signature of one of its responsible officers, and specifying the office which he holds under the company.

Agent not to delegate his authority to indorse.

There is a well recognised rule of law that an agent is not presumed to have any power to delegate his authority to another. The Latin maxim is *Delegatus non potest delegare*. And therefore bankers, whatever inclination they may show to relax their rules when other banks are concerned, will not, in dealing with the outside public, admit an indorsement *pro* or *per pro* for a person who is himself purporting to act for a principal. The "*pro* manager," question is dealt with in No. 478 of the Questions of Banking Practice, as regards the frequent relaxation of the rule among banks themselves. But you will find, in Question 439, that on a cheque payable to "the Old Castle Underwriters' Association *per* J. Jones and Sons, Agents," the indorsement "Old Castle Underwriters' Association *p. pro* J. Jones and Sons, Agents, T. Williams," is condemned as infringing the rule that an agent cannot delegate his authority. In 473, on a cheque payable to "the St. Michael's Steamship Company," the indorsement "*p. p.* Chas. Brown, Secretary St. Michael's Steamship Co., Thomas Smith," is condemned for a like reason. In 484, again, this question is put: "Would a banker be justified in paying a "cheque to the order of 'John Smith for W. Jones,' and indorsed "'*per pro* John Smith, Samuel Johnson?'" The answer is: "No. John Smith, being W. Jones's agent, has no right to delegate his authority to Samuel Johnson." On the other hand, certain high functionaries, the nature of whose office makes it necessary that they should delegate their powers, are, for this purpose, regarded as principles. Thus, in 485, the Council of the Institute were asked, "Is the following indorsement, on a cheque

But agent, on a large scale, sometimes necessarily treated as a principal in this respect.

"made payable to the Receiver-General of Inland Revenue, London, "a sufficient discharge? Acting as a trustee of public money, can "the payee delegate his authority?—'*per pro* Sir Alfred Slade, Bart., "Receiver-General of Inland Revenue, W. Rea.'" The answer is: "The Receiver-General is considered as a principal, and may delegate his authority. Such indorsement is therefore sufficient."

On bill to order, special, after blank indorsement re-constitutes it a bill to order.

In calling your attention to the important change introduced by the Bills of Exchange Act, 1882, as to the effect of a special indorsement, following a blank indorsement, upon a bill payable to order, I cautioned you that the old rule was tenaciously prized by those who had learnt their banking prior to that Act. Let me now take an illustration from the Banking Practice Questions. It is Question 552. A cheque was presented, through the country clearing, payable to the order of Samuel Jones, and bore the following indorsements:—

"*per pro* Samuel Jones,
E. E. Jones.

Pay to the order of the Commercial Bank of London,
Chas. Brown and Son."

The cheque was returned to the country bankers by whom it was crossed, marked "Requires 3rd indorsement."

They indorsed the same and sent direct to the bank on whom it was drawn, stating that "As the first indorsement is blank, the "cheque is therefore payable to bearer, and does *not* require a third "indorsement." Which is correct? The answer lays down the new rule, which results from the Act stating that "a bill is payable "to bearer which is expressed to be so payable, or on which the "only *or last* indorsement is an indorsement in blank." The answer is as follows: "Previous to the passing of the Bills of "Exchange Act, 1882, such third indorsement could not have been "required, but by section 8, sub-section 3, such indorsement is now "necessary."

There is another point to which a recent decision, in June, 1893, makes it desirable that your attention should be specially directed.

Effect of omitting name of payee different according as bill is worded Pay "order" or Pay "or order."

It is as to the effect of not filling in the name of the payee on a cheque payable to "order." Now a cheque to order in which the payee's name is omitted might run in either of two forms, viz. :—

(1) Pay to _____ or order.

(2) Pay to _____ order.

In the first case the cheque is not a complete bill of exchange at all. And although the holder may be entitled, under section 20 (1), to insert the payee's name, yet if it is presented to the banker on whom it is drawn without the omission having been supplied, I should not, after the doubts expressed in the recent case of Chamberlain *v.* Young ([1893] 2 Q B, 206 C A, 63 L. J., Q B 28), recommend the bankers to honour it, in that form, by treating it as payable to bearer. In the second case, when the cheque reads "Pay to—— order," the answer given by the Council of the Institute to Question 553 is, *as to its first branch*, expressly confirmed, and such a cheque is in effect "Pay to *my* order," and requires the indorsement of the *drawer*.

Chamberlain v. Young.

On bill drawn to bearer, indorsements immaterial.

But where a bill is *drawn* payable to *bearer*, and at the time of presentment for payment to the banker remains unaltered in this respect, the banker is only concerned with his customer's direction to pay *bearer*, and no special indorsements which appear on the bill need be regarded by the banker.

Effect of altering drawing from bearer to order.

I should like, however, to see the following point distinctly decided by a court of law : If a bill is drawn payable to a specified payee *or bearer*, and is, by *the holder*, altered by striking out the words "or bearer," is it, or is it not, within the right of the holder thus to curtail the drawer's order, taking, as it were, something *less* than the drawer gave him ? The question is important to bankers for this reason : that, although the holder thereby curtails the drawer's order, he increases the responsibility of the paying banker. On the one hand you will find it strongly insisted on by the bankers that no one has any right to alter the drawing but the drawer. On the other hand, there was decided in 1826 the case of *Attwood* v. *Griffin* (2 C and P, 368). The head note states that a bill was

Attwood v. Griffin.

drawn payable to bearer, and, after acceptance, the words "or order" were *added*, which is not very intelligible. But the facts seem to have been that the bill was drawn pay to A B "or bearer," and after acceptance it was altered to pay A B "or order." And it was held, in an action by a *bonâ fide* holder for value, that the altering the generality of "bearer" to the particularity of "order" was no more, in effect, than a holder inserting his name when the bill was issued without a named payee. Lord Chief Justice Best added that it was similar to a man limiting the negotiability of a bill by indorsement to a particular person. No banker, of course, would treat the bill as still payable to bearer if it came to him with those words struck out, however much he might suspect that the alteration was not made by the drawer, and however strongly he might hold the doctrine that none but the drawer could properly make or authorise the alteration. The alteration of a bill drawn to order by making it, in the body of it, payable to bearer would be a most material and unwarrantable act, because it would enlarge the drawer's order and dispense with the necessity of the payee's indorsement. The only way in which a cheque to order could regularly become payable to bearer would be by the payee or some subsequent party indorsing it in blank.

Alteration from order to bearer.

And now I think we must close our enquiries on the subject of indorsements. It would be possible, of course, if time permitted, to extend them much further. My aim has been, in conveying as much positive information on the subject as our limits permitted, to choose such topics, and to treat them in such a way, as to suggest further inquiry, and, if possible, to be of service in showing how such further inquiry can be conducted when you are grappling, as I see you intend to grapple, with this subject each on his own account.

LECTURE IV.

OF CHEQUES ON A BANKER.

Cheques. We now come to "Cheques upon a Banker," the subject which we reserved for this, the last of the four evenings available to us. As

Their origin. the bill of exchange led to the promissory note, so the promissory note led on to the cheque. You probably remember that at our first meeting we noticed the convenience of bills as affording an acknowledgment of indebtedness, and reducing the amount to certainty. We noticed also how, when this convenience was recognised, merchants took to drawing bills and obtaining the debtor's acceptance thereof, in cases where it was not intended to negotiate them, but merely to use them as a record of the debt and its amount. We also saw how, from this use of bills, it was an easy step to dispense altogether with the drawer, and for the debtor, by giving his promissory note, to start with a promise to pay of his own accord, instead of waiting to assent to the order of his creditor. The promissory note, once established, was rapidly utilised by the goldsmiths and by their successors the early bankers as a credit document, and notes were issued largely in exchange for the deposits of customers or in the discount of bills, and passed current as bankers' promissory notes, or, shortly, "bank notes," with a readiness varying in proportion to the reputed solvency of the issuers. To be useful in lieu of cash their instant transfer-

Notes to bearer on demand. ability and prompt convertibility were essential. They were, therefore, payable not only *to bearer* but *on demand*. This quality of being payable to bearer on demand is important for you to bear in mind because it will help you to understand the history of cheques in their gradual rise, growth and development out of these bankers' promissory notes.

The unlimited multiplication of credit documents passing current with a facility equal to, and, in large amounts, greater than that of coin, presented a financial danger to which Lord Chief Justice Holt was apparently early alive, and which ultimately aroused the

attention of the legislature. Acts of Parliament began to appear upon the Statute Book regulating the issue of notes payable to bearer on demand, and imposing elaborate restrictions with heavy penalties for their disregard. Examples of these enactments are the 15 Geo. III, c. 51, in 1775, and 17 Geo. III, c. 30, in 1778.

Led to order forms to bearer on demand.

For some reason, possibly in consequence of the legislative restrictions upon the issue of notes, the bankers about a hundred and twenty years ago adopted a new method with their customers. Instead of handing to a depositor a roll of promissory notes of various amounts, payable to bearer on demand, they entered the amount received from the customer to his credit in their books, and they issued to him a book of order forms to bearer on demand, undertaking to honour such orders so long as they had assets (French assez) or "sufficient" funds of the drawer in their hands. Now before going one single step further we ought to observe that the fundamental difference between cheques and other bills lies in the fact that there is no acceptance. The drawee is and remains liable to the drawer and to the drawer alone upon the cheque, and this liability exists by reason of the relation of banker and customer, which implies an obligation to honour the cheques so long as there are funds of the customer's available in the banker's hands. This is a most important distinction as you will shortly see. To return to our story, these order forms were "to bearer" and "on demand," in imitation of the notes which they were intended to supersede. And just as the promissory notes bore registered numbers for ready verification when the note was presented for payment, so these books of forms bore registered numbers as a "check" or means of verification if, when the order should come to be presented for payment, there should be any doubt of its genuineness. The books came to be called "check-books" and the forms "checks," and you are familiar with the consecutive registered numbers which these books bear on the counterfoils and on the order forms to the present day. The paying banker is thus enabled to see, by a glance at the record in his possession, to whom was originally issued the book of forms, from which the order form presented to him has been detached.

With general undertaking by banker, but not acceptance.

Check-books and checks.

The original spelling of "checks" was for a long time adhered to and is still preferred by some. But the distinctive form of "cheque" is conveniently now appropriated to the draft on a banker on demand, while "checks" may be ordered in any quantity at your tailor's, or experienced by any one subject to restraint or control. Now these cheques, unlike the notes, being adaptable to the precise amount which the customer wished to pay, the cheque system naturally became a more and more popular method of transmitting money or transferring credit from one place to another, and with the marvellous perfection of the clearing system, has reached the phenomenal proportions to which we gave a passing glance at our first meeting. They are still payable on demand. But, as you know, they are sometimes now payable to bearer and sometimes to order, and I want you now to follow me while I try to point out to you, *firstly*, the reason why they long remained payable only to bearer; *secondly*, the way in which these instruments first became payable to order; *thirdly*, the protection to bankers which, by the foresight of men who have now passed away from the banking and mercantile world, was provided in respect of indorsements, when the introduction of cheques to order threatened to multiply indefinitely the responsibility of the paying banker. If the cheque was convenient as a means of remittance while payable to bearer, it became vastly more so when, by drawing to order, the drawer or remitter could add the security of the payee's or indorsee's signature. So that, *fourthly*, if you want to understand the course of legal decision and legislation on the questions of crossed cheques and "not negotiable" as a part of the crossing, you must follow me carefully while I attempt to sketch the struggle waged between the customers and their bankers in the Law Courts, in the Press and in Parliament, the results of which are embodied in the portion of the Codifying Act relating to crossed cheques. On the one hand, you will observe the customers striving to obtain an absolutely safe method of making a money remittance by cheque, by throwing more and more responsibility first on the paying banker and later upon the receiving banker also. On the other hand, you will see the bankers keenly alive to the vital

Arrangement of subject.

importance of watching most jealously the imposition upon them of fresh responsibilities beyond that inherent in their relation to their customer of paying only upon his genuine order as drawer of the cheque to the person who, so far as they can judge *bonâ fide* and in the ordinary course of their business, is entitled to the benefit of that order at the time when the cheque is presented.

Cheques long remained to bearer.

First then, why was it that until the early fifties of the present century, cheques remained almost invariably payable to bearer? Because the early Stamp Acts of 1782 and 1815, while they subjected bills in general to stamp duty, exempted drafts on a banker payable to bearer on demand. The exemption was subject to certain conditions as to the banker carrying on business within ten (afterwards fifteen) miles of the place where such drafts were issued, and so forth. But all other drafts on a banker, for example, those not to bearer or not on demand, or those drawn on a banker carrying on business more than fifteen miles from the place of issue, or those which in any other way did not conform to the conditions of exemption, were liable to the *ad valorem* duty on bills of exchange. It was not till 1858, that a short Act (21 Vict., c. 20), deprived bearer cheques of their exemption and subjected them to the same duty as the order cheques, whose introduction we are now about to notice.

Stamp Act, 1853. Cheques to order.

In 1853, by the Stamp Act of that year, 16 & 17 Vict., c. 59, drafts on a banker payable *to order* on demand were rendered valid if stamped with a penny stamp. When this innovation was proposed, the Bill roused the attention of the bankers. It was sure, of course, to increase to a very great extent the number of drafts requiring indorsement, which they would be called upon to honour. At the suggestion of the late Lord Addington, then Mr. J. G. Hubbard (who was not at the time a member of the House of Commons, but was a governor of the Bank of England) an important protecting clause was inserted for the benefit of the bankers. It was section 19 of the Act, and was in the following terms :—"Provided always, that any draft or order drawn upon "a banker for a sum of money payable to order on demand which "shall, when presented for payment, purport to be indorsed by the

Protection to bankers against forged indorsements, by s. 19.

'person to whom the same shall be drawn payable, shall be a "sufficient authority to such banker to pay the amount of such "draft or order to the bearer thereof; and it shall not be incum- "bent on such banker to prove that such indorsement *or any* "*subsequent indorsement* was made by or under the direction or "*authority* of the person to whom the said draft or order was or is "made payable either by the drawer or any indorser thereof."

This section was not very happily expressed, inasmuch as it provided merely for those orders which purported to bear the indorsement of the *payee himself*, and did not, in terms, provide for orders which purported to bear the indorsement of an agent for the payee. The concluding words, however, showed that not only the payee's but an agent's indorsement, and not only the first but subsequent indorsements were intended to be within the protection.

Charles v. Blackwell.

Moreover, the Court of Appeal in 1877, in the case of Charles *v.* Blackwell, (2 C.P.D., 151) held that this section, imperfectly worded as it was, sufficed to protect a banker who had paid on an *unauthorised* indorsement by an agent. And, so interpreted, the protection given by section 19 of the Stamp Act of 1853 continued to do duty till supplemented, and as regards cheques, practically superseded, by section 60 of the Bills of Exchange Act, 1882, to which we referred on the last occasion of our meeting. And, for fear lest its repeal should deprive bankers of any protection which they would otherwise have, it remains unrepealed to the present day.

Crossed cheques and a/c payee.

Now, these cheques *to order* on demand, under the lower stamp duty of one penny, and subject to that protecting clause of the Stamp Act, 1853, became, as was expected, vastly more popular instruments for making payments at a distance. Renewed efforts began to be made to increase their efficiency by ensuring their payment to a banker, and, if possible, to the payee's banker, and even to the account of the payee. And we must now examine the struggle concerning "crossed cheques," "not negotiable" and "a/c payee," which has not yet terminated between the customer desirous of making the cheque the means of ensuring that the payment shall reach the proper hands, and the banker naturally unwilling to incur further risks and responsibilities. This brings

us to the subject of crossed cheques. The custom of crossing cheques arose long before they began to be drawn to order. Prior to 1853 it had long been usual for bankers' clerks, presenting cheques through the clearing, to stamp the names of their banks across the cheques as an indication of the channel through which they were presented. And as cheques were payable to bearer, the public themselves, as a sort of safeguard, adopted the practice of crossing the cheque with the name of the banker to whom they wished the payment to be made. Where the drawer of the cheque desired the safeguard of having the cheque paid to some banker, but did not know who was the payee's or bearer's banker, or whether he had a banker at all, it became usual to cross the cheque with two lines and the words "& Co." between them to indicate that it was to be paid to some banker or another.

Origin of Crossing prior to 1853.

The first case upon a crossed cheque arose while cheques were still always payable to bearer. In February, 1852, was tried the case of Bellamy *v.* Marjoribanks (7 Exch. 389.) The plaintiffs, Bellamy and Foster, drew on their bankers, Messrs. Coutts & Co., a cheque payable to Geary or bearer, and crossed it "Bank of England, account of Accountant-General." Geary ran his pen through these words, leaving them still legible, and crossed the cheque to his own bankers, Gosling & Co., who collected it and placed the proceeds to the credit of Geary's account in their hands. Geary appropriated the money which, being trust funds, ought to have gone to the Accountant-General, and the plaintiffs, the trustees, had to pay the amount of £2,500 over again. The plaintiffs, having crossed the cheque to the Bank of England, felt greatly aggrieved that their bankers should have paid it to Messrs. Gosling, and by so doing, should have enabled Geary to put the proceeds into his own pocket, and they sought to make their bankers liable to them for the loss. Baron Parke, in holding that no liability attached to the paying bankers, dwelt upon the security which these crossings afforded (so far as they went) that no misappropriation or diversion of the fund would be intentionally permitted by bankers, who, as a body, were to be relied on to do all in their power to thwart malpractices and bring misdeeds to

Bellamy *v.* Marjoribanks.

light. But, his lordship said, the effect of the crossing must not be misunderstood. It was no part of the cheque itself, but a mere memorandum. It might be evidence of negligence in the paying banker if he paid it to someone who was not a banker at all. But in the case before him the name of a well-known firm of bankers had been substituted for the bank originally named, and he could not say that the paying bankers had incurred any liability merely because they had paid to a firm of bankers other than those originally named on the crossing. This decision caused great dissatisfaction in the commercial world.

Carlon *v.* Ireland.

In January, 1856, Carlon *v.* Ireland (5 E. & B. 765, 25 L. J., Q.B. 113) came before the Court of Queen's Bench on appeal from Lord Campbell's ruling, in which he had adopted the law as laid down in Bellamy *v.* Marjoribanks.

One Morris drew a cheque for £48, on Masterman's bank, payable to plaintiff or bearer. He crossed it generally "& Co." and sent it to the plaintiff who was a solicitor. Plaintiff turned the general crossing into a special crossing by inserting the name of his own bankers, Dixons, in the crossing and handed the cheque to one of his clerks to pay into Dixons' bank. This clerk was in the habit of frequenting the coffee-house of the defendant Ireland in Fetter Lane. He was well known to Ireland as clerk to a respectable firm of solicitors, and he induced honest Ireland to give him cash for the cheque. The clerk, for some reason which I have never fathomed, paid £15 out of the proceeds to his employer's credit at Dixons' bank, possibly as a slight recognition of past favours, and with the remaining £23 he took a holiday from which he never returned to his master's office. Ireland, the coffee-house keeper, paid the cheque into Goslings and Goslings collected the amount from Mastermans. Now here you notice the special crossing was not struck out as in the previous case and replaced by a crossing to Goslings. The special crossing to Dixons' remained on the cheque when it was presented to Mastermans, who, with that crossing on it, paid it to Goslings the collecting bankers. The payee of the cheque sought to recover the proceeds from the coffee-tavern keeper, but the latter was held entitled to the cheque and

the proceeds, on the ground that he was a *bonâ fide* holder for value, and the crossing having been held in Bellamy *v.* Majoribanks to be no part of the cheque but merely a memorandum for the bankers, the plaintiff took nothing by his action. The public called loudly for legislation to give some legal recognition to the crossings on cheques, and to impose on bankers an obligation to respect them.

First Crossed Cheques Act, 1856.

Accordingly in June, 1856, was passed the 19 and 20 Vict., c. 25, an Act to amend the law relating to drafts on bankers. This Act recites that doubts have arisen as to the obligations of bankers with respect to cross-written drafts ; and that it would conduce to the ease of commerce, the security of property and the prevention of crime, if drawers or *holders of drafts* on bankers payable to bearer or to order on demand, were enabled effectually to direct the payment of the same to be made to or through some banker.

It then enacts that :—"In every case where a draft on any "banker made payable to bearer or to order on demand, *bears* "*across its face* an addition in written or stamped letters of the "name of any banker, or of the words 'and Company' in full or "abbreviated, either of such additions shall have the force of "a direction to the bankers, upon whom such draft is made, "that the same is to be made or paid only to or through *some* "*banker*, and the same shall be payable only to or through some "banker."

It is noticeable that holders of drafts are mentioned in the recital, but nothing is done to define their position in the body of the section.

So that by this modest Act all that was required, whether the cheque was generally or specially crossed, was that it should be paid to some banker.

Simmonds *v.* Taylor.

A year and a half later, in December 1857, the Court of Common Pleas was called upon to decide the case of Simmonds *v.* Taylor (27 L. J., C. P. 248). Simmonds banked with the London Joint Stock Bank, and he sued the defendant, as its public officer, under the following circumstances. The plaintiff, Simmonds, caused a cheque for £125 to be drawn on the defendant's bank, payable to G. Masters or bearer. Plaintiff signed it as drawer and crossed it

"& Co." between two parallel lines, and sent it by post addressed to Masters, at 22, Duke Street, Manchester Square. The letter was not delivered by post, but the envelope was pushed under the door. On examination it was found to bear the ominous words "the finder is much obliged," but it was not till Masters found that the cheque for £125 had been abstracted that he realised the nature of the obligation, which the finder had so conscientiously acknowledged. Meanwhile the finder had obliterated the two lines and the "& Co.," and had folded and creased the cheque so as to effectually obscure what traces remained of the obliteration, such traces being only visible when the cheque was held up to the light. Having done this, he presented the cheque, and as bearer, received the amount across the counter.

The Court held that the payment by the defendant's bank was good as against their customer the plaintiff. They pointed to the fact that the Act of 1856 laid down that if the cheque "bears across its face" a crossing, such crossing shall be a direction to the paying banker to pay through some bankers, but they held that *bears* must mean bears *at the time of presentment*. Now here the crossing was no longer on it at the time of presentment, and therefore the banker, in the absence of negligence (which was negatived by the jury), was held not liable for paying the cheque to bearer across the counter.

The Court went on to say that a crossing was not a material part of the cheque, and therefore it would not be forgery to remove or alter it, and consequently the alteration not being a material alteration, did not void the cheque as a material alteration would have done. So much for the Act of 1856.

This decision led to further legislation, and in August, 1858, was passed the Statute 21 and 22 Vict.. c. 79, which enacts :—

Crossed Cheques Act. 1858.

21 and 22 Vic., c. 79.

(1) "Whenever a cheque or draft on any banker payable to "bearer or to order on demand shall be issued, crossed with "the name of a banker, or with two transverse lines with the "words : 'and Company' or any abbreviation thereof, such "crossing shall be deemed a material part of the cheque or draft, "and except as hereafter mentioned, shall not be obliterated or

"added to or altered by any person whomsoever after the issuing "thereof, and the banker upon whom such cheque or draft shall "be drawn shall not pay such cheque or draft *to any other than* "*the banker with whose name such cheque or draft shall be so* "*crossed*, or (if the same be crossed, as aforesaid, without a "banker's name) to any other than a banker."

This, you see, is getting much more definite by making the crossing a material part of the cheque, and it is laying the foundation of the law as it now stands as to a special crossing.

(2) "Whenever any such cheque or draft shall have been issued "uncrossed, or shall be crossed with the words: 'and Company' "or any abbreviation thereof, and without the name of any banker, "any lawful holder of such cheque or draft, while the same remains "so uncrossed, or crossed with the words: 'and Company' or any "abbreviation thereof, without the name of any banker, may cross "the same with the name of a banker; and whenever any such "cheque or draft shall be uncrossed, any such lawful holder may "cross the same with the words: 'and Company' or any "abbreviation thereof, with or without the name of a banker; "and any such crossing as in this section mentioned shall be "deemed a material part of the cheque or draft and shall not be "obliterated or added to or altered by any person whomsoever "after the making thereof, and the banker upon whom such "cheque or draft shall be drawn shall not pay such cheque or "draft to any other than the banker with whose name such cheque "shall be so crossed as last aforesaid." Here the *holder* of the draft is recognised as entitled to cross the cheque, but there is no express remedy given to him against the banker who pays the cheque in disregard of the crossing.

(3) "If any person shall obliterate, add to or alter, any such "crossing with intent to defraud or alter any cheque whereon such "fraudulent obliteration, addition or alteration shall have been "made, shall be guilty of felony and liable to transportation "for life."

Then we come to a most important protection to bankers which has also been carefully preserved in subsequent legislation. You

will see, as I read it to you, how it arose out of the last case I brought to your notice, about the alteration not being plainly visible at the time of presentment.

(4) "Provided always that any banker paying a cheque or draft "which does not at the time when it is presented for payment, "plainly appear to be or to have been crossed as aforesaid, or to "have been obliterated, added to or altered as aforesaid, shall not "be in any way responsible or incur any liability, nor shall such "payment be questioned by reason of such cheque having been so "crossed as aforesaid or having been so obliterated, added to or "altered as aforesaid, and of his having paid the same to a person "other than a banker or other than the banker with whose name "such cheque or draft shall have been so crossed, unless such "banker shall have acted *malâ fide* or been guilty of negligence in "so paying such cheque." The words "to have been obliterated, "added to, or altered, *as aforesaid*," and again the words "by "reason of such cheque having been so crossed as aforesaid, or "having been so obliterated, added to, or altered, *as aforesaid*," though grammatically they refer to the cheque bodily are clearly directed to the obliterations, additions, and alterations, made in respect of the crossings with which alone this short Act is concerned. You will find this may throw light upon an ambiguity in the corresponding section of the Codifying Act of 1882, to which I will call your attention when we come to the proviso to section 79 (2) of that Act.

The Attorney-General, Sir Fitzroy Kelly, in introducing the bill in the House of Commons, expressed some doubt about the propriety of relieving the bankers where the crossing had been obliterated, but only so that it did not *clearly* appear on the face of the cheque at the time of presentment.

In the Lords, the bill was introduced by the Lord Chancellor (Lord Chelmsford), and the clause protecting bankers received the support of Lord Overstone, and became law with the rest of the bill.

Smith v. Union Bank.

This Act of 1858 continued to regulate the law as to crossed cheques, till, in 1875, public attention was again drawn to this

subject by the case of Smith *v.* The Union Bank of London. In that case, Smith, the plaintiff, was the payee of a cheque drawn on the defendant bank and crossed to the London and County Bank. He endorsed it in blank and sent his servant with it to pay into the London and County. The servant lost it, and the finder passed it to a *bonâ fide* holder, for value, who paid it into the London and Westminster Bank, and the defendant bank paid it when presented to them for payment by the London and Westminster, notwithstanding the fact that it was crossed to the London and County Bank. Smith sued the defendant bank for paying it to the London and Westminster in disregard of the crossing. But he failed to recover. It was held that his indorsement in blank having made the cheque payable to bearer, he was no longer the true owner of the cheque from the moment that it was taken for value by the *bonâ fide* holder without notice of defective title, to whom the finder passed it. The Union Bank, therefore, had paid it to the bankers, who, though not named in the crossing, were nevertheless the bankers of the true owner entitled to the proceeds of the cheque. It was further pointed out that, as the law then stood, the only person who could bring an action on the cheque against the banker upon whom it was drawn, was the drawer ; that the law as to crossing of cheques was a law introduced for the benefit of the drawer, and if he had suffered from the disregard by the Union Bank of the crossing on the cheque, he (the drawer) might have brought his action against them. But the court pointed out that the drawer of the cheque had suffered no loss, because, as between him and the payee, the debt in respect of which the cheque was given was discharged. So the payee of the cheque found himself neither entitled to sue the *bonâ fide* holder nor the banker who had collected the cheque on his behalf, nor could he sue the paying banker for disregarding the crossing, because, up to that date, there was no remedy on that head, except at the suit of the *drawer* of the cheque.

Crossed Cheques Bill, 1876.

This case created a great commotion in the mercantile world, and led to the passing of the "Crossed Cheques Act, 1876."

The bill was introduced in the House of Lords by Earl Cairns

The Lord Chancellor's proposals.

at that time Lord Chancellor. In the debate on the second reading, his lordship mentioned that crossed cheques had long been in use in this country; but it was not till 1856 that any notice was taken of them by the legislature. The effect of crossing had up to that date remained a matter of convention and courtesy among the bankers. But in 1856 the legislature attempted to give statutory security to cheques which were crossed. The Act of 1856, his lordship described as not a very happy specimen of legislation. It merely enacted that any cheque crossed either generally or specially should be paid only through a banker. The framers of that measure had overlooked one peculiarity of a cheque, viz., that no one can bring an action against the banker on a cheque drawn upon him, except the person who draws it, because a cheque is simply a direction by the drawer to the banker, to pay money of his which is in the banker's hands. After the passing of the Act of 1856, some cheques from which the crossing had been obliterated had been presented for payment and the bankers paid them, and the crossing had been held still to be no material part of the cheque itself, so that its alteration did not invalidate the cheque as an order on the banker. The consequence had been that in 1858 another Act was passed providing that the crossing of a cheque should be a material part of the cheque and placing increased restrictions upon the payment of it by a banker, in case of a special crossing or in case of removal, obliteration or erasure of the crossing. The Act of 1858 had been in force ever since. But a case had arisen lately which had given rise to a great deal of misapprehension and excitement in the commercial world. He referred to the case of Smith *v.* The Union Bank of London, where the loser of a cheque had been held disentitled to succeed in an action against the bank who had paid in disregard of the crossing. The judgment of the Queen's Bench Division and of the Court of Appeal had been given against him on these two grounds:—Firstly, that the cheque having been indorsed in blank by the payee had become payable to bearer, and the property in it had therefore passed to the *bonâ fide* holder for value, whose bankers, the London and Westminster Bank, had collected it, the loser, the plaintiff, having no longer any title

to the cheque. Secondly, that the only person who could bring an action on the cheque was the drawer, and the statutory injunction to the banker to pay only through a banker or the specified banker, was introduced for the drawer's benefit, and the drawer was not damnified because, as against him, the loser, to whose hands the cheque had come, was legally regarded as paid.

This case, continued his lordship, exhibited in a new phase the crossed cheque system, and the bill of 1876 was now introduced to place crossed cheques on a better footing. The Acts of 1856 and 1858 were to be repealed and the first eight clauses of the new bill substantially re-enacted the combined effect of the provisions of the Acts of 1856 and 1858.

The 9th clause proposed to provide that :—

"A person taking a cheque crossed *specially* shall not have and "shall not be capable of giving a better title to the cheque than "the person from whom he took it had. But a banker to whom a "cheque is crossed specially and who has in good faith and without "negligence received payment of such cheque for a customer, "shall not in case the title to the cheque prove defective, incur "any liability to the true owner of the cheque by reason only of "his having received such payment."

Lord Cairns said it had been mooted that this infirmity of title should be extended to cheques crossed generally, instead of confining it to specially crossed cheques. But he thought that, unless parties were left free to cross cheques generally "& Co." without this consequence of the doubtful title arising, it would prove irksome and lead to a demand for repeal. His lordship also referred to a bank then just started, called the Cheque Bank. He did not know much of its details, but he had heard it had proved a great convenience. All the cheques of that bank bore the printed crossing "& Co.," and were intended to pass over a counter or from hand to hand, like money, until they came back to the bank itself. The object of a *general* crossing was not to hamper the negotiability of the cheque, but merely that there might be some clue to the hand which ultimately received the money. But it was quite a different matter when a cheque was *specially* crossed. The moment

that was done it was an intimation that the cheque must be regarded as the property of some person who had an account at that particular bank and not as an instrument which might pass from hand to hand without distinction. For this reason he proposed to confine the infirmity of title to *specially* crossed cheques. But he thought there should be a protection to the banker to whom the cheque is crossed *specially*. And he proposed that when such a banker, in good faith and without negligence, received payment *for a customer*, the banker should not if the title proved defective, incur any liability merely by reason of his receiving the amount of the cheque for his customer. A banker paying a crossed cheque in accordance with the crossing, in good faith and without negligence, was to be in the same position as if he had paid the true owner. The true owner was to be especially provided with a remedy, against the banker paying in disregard of the crossing, for any loss occasioned thereby. Such then, in its original outline, was the scheme of the Lord Chancellor for placing crossed cheques on a better footing.

The Bill in the House of Commons.

Let us see now what happened in the Commons. When the Bill was sent down to the Lower House, Sir John Holker, then Attorney-General, took charge of it. An amendment was proposed in Committee by the Lord Mayor of London (Alderman Cotton), which is worth recording, because if it had been argued out we might have had a legislative decision on the important point which daily agitates bankers as to the effect of adding to a crossing the words "a/c of John Jones," or "a/c payee," or words to that effect.

Alderman Cotton's amendment.

Alderman Cotton proposed by way of amendment to Clause 5 (crossing after issue). "When a cheque is crossed generally or "specially, a lawful holder may add to the crossing the words, 'for "'account of,' or any abbreviation thereof, followed by the names "of the persons or company to whose account he wishes the cheque "to be credited."

Crossing to a particular account.

No discussion took place on this amendment, and there was no attempt to lay down what were to be the consequences or effect of adding those words to the crossing. The bankers have always steadily declined to recognize any liability whatever to see to the

application of any cheque, beyond paying it to the receiving banker. The amendment was, by leave, withdrawn, and Clause 5 agreed to as it stood. The habit of adding the words "a/c, payee," or "for account of A.B," or similar words has extended, and drawers and holders of cheques are undoubtedly under a strong impression that by adding those words they are imposing a liability upon the paying banker, not only to pay to a banker, or to the specified banker, but also to pay in the cheque to the account of the person specified. On the other hand, the bankers as steadily decline to recognize any such effect in the addition of such words. The matter has not yet been brought to the test of a legal decision, but the whole mechanism of the clearing system would seem to militate against any such responsibility being imposed, whether by the drawer or by the holder, upon the paying banker. To the receiving banker those words would probably be held distinct notice of the account to which the cheque was to be credited, and a disregard of such notice might reasonably amount to negligence in the receiving banker. In the case of the National Bank *v.* Silke, the effect of the words "a/c J. F. Moriarty, National Bank, Dublin," was incidentally considered by the Court of Appeal, and Lord Justice Lindley expressed an opinion that they "amounted "to nothing more than a direction to the plaintiffs (the *receiving* "bankers) to carry the amount to Moriarty's account when they "received it." There was, however, no question before the Court in this case as to the effect of the words as a direction by a drawer to the *paying* banker. No doubt, if the paying banker wilfully and knowingly paid a cheque so crossed to the collecting banker for the avowed purpose of his carrying it to some other account than that specified, a case might possibly be made against the paying banker; but it would have to be founded upon strong evidence of positive misconduct on the part of the paying banker. In the ordinary course of business, all that the paying banker can do, is to honour the generally crossed cheque when presented through a banker, and the specially crossed cheque through the bankers specified in the crossing, and has no means whatever of seeing to its proper application by the receiving banker. It is possible that litigation

Amendment withdrawn.

Effect of crossing to particular account discussed.

National Bank *v.* Silke.

may arise on this point, or that legislation may be required to settle it, but I have thought it right to call your attention to the amendment of Alderman Cotton to the Bill of 1876, and to the fact that either from want of time, or because discretion was deemed the better part of valour, neither of the belligerents brought it to the test of a pitched battle on that occasion.

Mr. Hubbard's objections to the Lord Chancellor's proposals.

On the third reading a most resolute attack was made by Mr. J. G. Hubbard (afterwards Lord Addington) upon the Government proposals as to crossed cheques set forth in Lord Cairns's speech. Mr. Hubbard had withdrawn a bill of his own in deference to the Government measure, which he now sought to remodel in accordance with his own ideas of what the mercantile world required in crossed cheques. He reviewed the cases with much ability. He pointed out that, in Simmonds *v.* Taylor, Baron Bramwell had decided that it was impossible to treat the crossing as a material part of the cheque and yet preserve its negotiable character. He showed that with that dictum in full view the legislature had passed the Act of 1858, and had thereby distinctly decided that, if either the materiality of the crossing or the negotiability of the cheque must be sacrificed, it should not be the materiality and efficacy of the crossing, and that the very stringent words of the Act of 1858 were introduced for placing this doctrine beyond all doubt. Then he complained of the tenacity of lawyers as shown by Lord Bramwell's judgment in the case of Smith *v.* The Union Bank of London, where, in spite of the Act of 1858, he lays down that crossing has never affected negotiability. Mr. Hubbard reminded the House that cheques were not, like ordinary bills, in need of this superstitious veneration for negotiability since they were not, as ordinary bills were, primarily intended for negotiation, but were intended to carry out payments. Moreover, he urged that the judges themselves had suggested a solution to which he thought effect should have been given by the Bill under discussion. The judgment in Smith *v.* The Union Bank concluded with these words:—"If the Statute had meant to prevent any "person from becoming lawful holder of a crossed cheque unless "he derived title through lawful holders, this ought to have been

"expressed." A learned writer under the signature B, in a letter to the *Economist* of January 1st, 1876, had even suggested suitable words for carrying out their idea. The words suggested were these:—

"Any person taking a cheque crossed with a banker's name "or '& Co.,' in transverse lines, shall have no better title to it than "the person of whom he took it had." This would include both general and special crossings. Mr. Hubbard felt that he had a good point here, because it was notorious, at that time, that a letter, on any legal, commercial or economic subject, signed simply B, was from the pen of Baron Bramwell himself. He expressed himself satisfied with the words so proposed on such high authority, because those words affected *all crossed cheques* with infirmity of title, and made the receiving banker liable as well as all other persons receiving money for the cheques.

He was then able to draw an effective contrast between these judicially accredited proposals and the scheme put forward by the Lord Chancellor. He complained that Lord Cairns's bill by confining the infirmity of title to specially crossed cheques, cut out ninety-nine hundredths of the crossed cheques from the beneficial proposals of the bill, and that by a certain clause (clause 12) of the bill, the same individual who, as the person taking the stolen cheque from the thief, is, by the first paragraph thereof, declared to have no title to it, is, by its second paragraph, absolved, as the receiving banker, from all liability to the true owner of the cheque of which he, the banker, has received the amount. And finally, to show that his arguments were not tainted with partiality, he stated that he was in no way opposed to the banking interest, being himself intimately connected with the Bank of England, and he wound up his speech with an effective allusion to his having, as a Governor of the Bank, when cheques to order were originated in 1853, suggested the insertion of section 19 into the Stamp Act of that year, and so provided the bankers with that protection against liability for payments on forged and unauthorised indorsements, without which they could not have accepted the working of such cheques at all.

I have thus summarised the proposals of the Government on

the one hand and of Mr. Hubbard, their principal critic, on the other, in order that you may see exactly what that conflict was, out of which the words "not negotiable" as part of a crossing originated. On the one side it was proposed that the effect of specially crossing a cheque should, of itself, besides making it incumbent on the paying banker to pay only through the specified banker, have the effect of making the cheque only transferable subject to defects of title in the transferor. On the other side it was demanded that any crossing, whether general or special, should have this effect.

There was, of course, the second issue between the disputants as to the propriety of protecting the receiving banker, by enacting that, where the title of his customer proved defective, the banker should not incur any liability, merely from the fact of his collecting the cheque on behalf of such customer. This second issue was decided in favour of the receiving bankers, by giving them the protection proposed by the Government bill. The first issue was not decided either one way or the other, but a compromise was effected to which I now invite your particular attention.

The Attorney-General's Compromise.

Sir John Holker on behalf of the Government offered to introduce a provision that the mere crossing of a cheque, whether generally or specially, should not of itself have any effect upon the negotiability of the cheque, beyond requiring its payment to a banker or to the specified banker as the case might be. Neither the transferability nor the indefeasible title acquired by honest acquisition for value were to be affected. But, on the other hand, any crossed cheque, whether generally or specially crossed, was to be liable to be deprived of the indefeasibility of title by the addition to the crossing of the words "not negotiable." The Attorney-General stood firm upon the question of the protection to the receiving banker, pointing out that the bankers were only to be protected in the cases where they received the amount of the cheque *for a customer*, and not on their own account. Such was the history of the Crossed Cheques Act, 1876, the last measure added to the Statute Book in that year.

"Not Negotiable."

Crossed Cheques Act, 1876.

By seeing thus exactly how the words "not negotiable" on a crossed cheque originated, you will understand that they are a part of the crossing on a cheque, and have no statutory signification whatever on any document except as part of the crossing upon a cheque. You will understand that their object was to destroy that quality of indefeasible title resulting from honest acquisition for value, which (as the second of our essentials of negotiability in its widest sense), had attached to the lost cheque in Smith *v.* The Union Bank of London, the case which led to the passing of the Crossed Cheques Act, 1876.

Though that Act was passed and remained undisturbed till its provisions were incorporated in the Bills of Exchange Act, 1882, I may as well tell you that in the following year, 1877, Mr. Hubbard returned to the charge. He brought in the Crossed Cheques on Bankers Bill, 1877, and the names of Mr. Goschen, Mr. Alderman Cotton, and Mr. Twells, were also on the back of the Bill. Mr. Hubbard reviewed the history of the rise and growth of the cheque system from the open cheque to bearer to the bearer crossed cheque, and thence to the crossed cheque to order. He said none of these modifications had sufficed to protect the public from the loss arising from bankers paying cheques, in disregard of the crossing, to a person who had either stolen it himself or got it, possibly *bonâ fide*, after it had been stolen. He complained of the late period of the Session at which the Act of the previous year had been got through Parliament, and he made one more effort to make all crossed cheques pass subject to defects of title, and to abolish the protection to the receiving banker. He stated his conviction that the Act of the previons year had proved a failure. He quoted the Chief Cashier of the Bank of England as having informed him that of the 5,200 customers of the bank he, the Chief Cashier, had only noticed one customer using the words "not negotiable," and that customer was a Dutchman, whom he supposed was imperfectly acquainted with the meaning of the words.

Mr. Hubbard's renewed attack in 1877.

Mr. Gregory and Mr. Muntz supported Mr. Hubbard, but on the motion of Mr. Backhouse seconded by Mr. Thompson Hankey,

The Compromise of 1876 upheld.

and supported by the Attorney-General, the House declined to disturb the compromise and the decision of the previous year, and it was ordered that the Second Reading of the Bill of 1877 be postponed to that day three months. This was on the 13th June. On the 19th, the *Times* had an article favouring Mr. Hubbard's views. Thus encouraged, Mr. Hubbard wrote a letter which

His letter to the *Times*.

appeared in the *Times* of the 27th, in which he said :—"The "rejection of the Bill on June 13th, was only a phase in the "struggle which has been carried on for a quarter of a century, "between commercial progress and legal obstruction. Commerce "has required, and by legislation in 1856 and 1858, aimed at a "perfectly secure and economical medium for making a specific "payment. Law has insisted, even in the face of legislation, on "retaining in checks, however constructed the quality of negotiability "in the special sense, which means 'assignable by delivery' like "bank notes, and conveying if for valid consideration (a colourable "qualification easily arranged), a legal title to the receiver of a "stolen cheque." The letter objected to the term "not negotiable" and, after complaining once more of the protection afforded to the collecting banker, concluded :—"So long as the "Act of 1876 stands unamended bankers will enjoy the distinction "of being privileged receivers of stolen cheques, and the public "will be deprived of the protection they desire."

You see, therefore, that able and outspoken advocacy was not lacking to the opponents of the legislation of 1876, and this fact is important when we find that, after an experience of eight years of the working of that Act, its provisions were confirmed and adopted by the Legislature, aided by such able commercial, banking and legal advisers as those who drafted, criticised, and finally approved the Bills of Exchange Act, 1882.

We have now seen that the words "not negotiable" have no statutory significance whatever, except as part of the crossing of a cheque, and that when so used they strike out the second quality of negotiability in its widest sense, that is to say, they prevent an indefeasible title from being acquired by honest acquisition for value, but they leave the element of free transferability unimpaired.

We have noted that besides this technical sense, they are often used in the sense of "not transferable," the sense in which they are used in that portion of the Bills of Exchange Act devoted to the negotiation of Bills.

You agreed, I think, with me, on a former occasion, that this two-fold use of the words, in the Act itself, might be answerable for a good deal of the confusion which exists in the minds of the general public as to "not negotiable," and I promised to show you that this confusion also existed in the minds of public officials. You probably all remember that somewhere about the year 1892, a new form of postal order made its appearance, bearing as a heading, the words, "Not negotiable." The precise effect of these words was of course a matter of importance to bankers through whose hands these documents pass in considerable quantities. The Secretary to the Institute of Bankers accordingly wrote to the Postmaster-General on the 6th October, 1892, at the desire of the Council of the Institute, to ask (for the information of their members) what is the precise meaning of the words "not negotiable" which are printed at the head of the postal orders. Mr. Talbot Agar enquired :—

Effect of the words "Not negotiable" printed on Postal Orders.

Correspondence thereon between the Institute of Bankers and the Post Office.

"Are such words to be understood :—

(*a*) "In their technical and legal sense as defined by the Bills "of Exchange Act, 1882, ss. 76, 77, 81 ; or—

(*b*) "As simply meaning not transferable ?

"As regards *(a)*, it may be remarked that the Act apparently "only authorises the use of the words, 'not negotiable' as part of "the crossing of a cheque."

In reply, the acting secretary of the Department was "instructed "by the Postmaster-General to point out that a postal order is an "order for the payment of money to the person named therein, "and therefore is not negotiable in any case. Consequently, no "person has a better title to an order than the person from whom "he received it. The object which the Post Office had in view in "printing on the orders the words in question, was to bring more "prominently to the notice of the public the fact that such orders

"were not negotiable or transferable. That is to say, that by the "use of these words the Post Office warns the Public, that by "accepting a transferred order, the individual so accepting, does "so at his own risk."

Now here it will be observed that we are first told that because a postal order is an order for the payment of money to the person named therein, *therefore* it is not negotiable (*i.e.*, transferable) in any case. But this by no means follows. Because an order to pay to the person named therein might possibly be complied with, as it would be now if the instrument is a bill, by a payment to the order of that person. But let us assume that the one thing follows from the other, and that a postal order to pay a named payee is equivalent to an order to pay him ONLY. If such is the case, then no other person can have any title at all. Yet we are told in the very next sentence that the consequence is precisely that which results from putting not negotiable on a crossed cheque which remains transferable, but loses its quality of carrying with it an indefeasible title to an honest acquirer for value. If no other person but the payee can have any title *at all*, it is surely misleading to say: "consequently no person has a *better* title to an order than the person from whom he received it," because this implies that if the transferor has a good title, he can pass on an equally good title to his transferee. One is led to believe that the order may be transferable after all. The next paragraph, however, dashes any such hope by stating that "the object of the Post "Office in printing on the orders the words in question, was to "bring more prominently to the notice of the public that such "orders were not negotiable or *transferable*." Here at all events we feel that we have it, in black and white, that the named payee has no power to transfer his right to receive the money to any other person whatever, and that no question of risk, or the title of the transferor can arise, because the transfer is simply a nullity. But once more we are plunged into doubt and difficulty by the explanation which follows:—"That is to say, that by the use of "these words the Post Office warns the Public, that by accepting "a transferred order, the individual so accepting, does so at his

"own risk." These concluding words can hardly mean that the individual so accepting gets a piece of waste paper in any event. They clearly point to the possibility of his having a right to receive the money if the title, of which he has taken the risk, turns out to be a good one.

The Council of the Institute, having thus been twice told in one letter that "not negotiable" on the postal orders means not transferable, and twice, in effect, that it means transferable subject to defects of title, were, I think you will say, justified when at p. 596 of Vol. 13 of their *Journal* they described the reply of the Post Office as hardly to be regarded as satisfactory.

And if you will refer to that page of the *Journal* you will find reprinted a correspondence which appeared the month after in *The Standard* between an unfortunate lady, to whom one of the new orders had been sent, and the Receiver and Accountant-General of the Post Office, to whom she appealed for advice as to how she could turn it into money. The postal order had been crossed "& Co.," and was made payable to herself. The lady wrote to say that under the new rules it was perfectly useless to her as she had no banking account and could not cash it either at a post office or through any friend or tradesman having a banking account. The reply was that "the Department has no power to "pay a crossed postal order except to a banker. Any banker, "however, to whom you are known could obtain cash for you in "the same way as he does for a client, *or a friend who has a "banking account would no doubt cash the order for you.*"

Here we have the noteworthy fact that the Receiver and Accountant-General distinctly recognises, as a perfectly regular transaction, the transfer of the order by the original payee to her friend, in exchange for value, and the right of the transferee to pass on the order to his own banker for collection. On the other hand the acting secretary, as we read just now, had been instructed to point out to the Institute of Bankers that it followed (as a matter of logic, or of law), from the postal order being an order for the payment of money to the person named therein, that, therefore, it is not negotiable *in any case.* And to show that by

not negotiable the Post Office meant not transferable, the acting secretary's letter went on to say the object of the Post Office in introducing those words was "to bring more prominently to the "notice of the public that such orders were not negotiable or "transferable."

Well the poor lady tried to turn her postal order into money, in accordance with the suggestions of the Receiver and Accountant-General, with the result which was to be expected. The bankers and the public had been so effectually impressed by the warning issued from the Post Office that the words "not negotiable" meant not legally transferable, that neither banker, tradesman nor friend would have anything to do with the order which the lady tried to get them to cash for her on the advice of the Post Office itself! The failure of these further attempts to cash the order having been brought to the attention of the authorities, with a request from the lady that the Department would make a special order for her to receive the amount at a post office, the reply, containing the ultimatum of the Post Office, stated that "the Department has no "power to pay a crossed postal order except to a banker. The "words 'not negotiable' have no statutory meaning as regards "postal orders, they merely indicate the fact that the holder of a "postal order cannot convey to anyone a better title than he has "himself."

But this is precisely the statutory meaning provided in the case of crossed cheques.

The reply continues: "In the case of a cheque the words have "a statutory meaning, and a crossed cheque with the words added "cannot be paid by a banker to anyone other than the payee, "and then the amount can only be placed to the payee's "account."

This, on the other hand, is not the statutory meaning in the case of a cheque.

But the reply proceeds to make this important announcement: "There is no legal objection to anyone having a banking account cashing a postal order for you if he wishes to do so." And it concludes thus: "If you cannot get the order cashed through a

"banking account, I can only suggest that you should return it "to the person from whom you received it."

So that all the previous statements about the postal order not being transferable come to nought. The order is declared to be legally transferable, and the printing on the orders the words "not negotiable" in order "to bring more prominently to the "notice of the public the fact that such orders were not negotiable "or transferable" seems to be unaccountable.

It is not pretended that the words have any statutory warrant, and, being printed on the orders quite irrespectively of whether the order is crossed or not, they cannot presumably have any effect in producing the result provided by the *Bills of Exchange Act*, 1882, in the case of "not negotiable," as part of a crossing upon a cheque, even regarding the Post Office as bankers.

It remains to be seen what will happen when one of these instruments is handed for cash to a friend, lost by the friend and passed by the finder for value to a *bonâ fide* holder, and rival claims to the order or its proceeds are set up by the loser and the *bonâ fide* transferee for value.

Upon the above correspondence, as a whole, they seem to be admittedly transferable. If they are negotiable instruments, either as bills or as coming under any of the categories mentioned in Picker *v.* The London and County Bank, the printing on them of the words "not negotiable" would be ineffectual and even misleading. If, on the other hand, they are (like some documents) freely transferable, *without being "negotiable instruments" at all*, then some other form of words which has not a special significance would seem preferable to those which the Department, from the best motives, has adopted in order to warn the public of the true nature of these orders. In either case it appears undesirable that they should be officially explained to be not transferable, or that any erroneous interpretation of the words "not negotiable" on a crossed cheque should be volunteered when too much confusion already exists on that subject in the public mind.

Provision of Bills of Exchange Act, 1882, on cheques.

Let us now look at the provisions of the Act as to cheques on a banker, sections 73 to 82 inclusive.

Cheque defined, s. 73.

A cheque, says section 73, is a bill of exchange drawn on a banker payable on demand. You will not forget that the main distinction between cheques and other bills is that cheques are not accepted by the drawee. The drawer remains the person primarily liable on the cheque, and the drawee, *i.e.*, the banker, is under no liability for dishonour of the cheque except to his customer the drawer. You will also remember that the protection provided by section 60 against liability for paying on forged or unauthorised indorsements is limited to cheques, and does not apply to other bills.

Lord Bramwell's clause, s. 74.

Section 74 is the clause introduced by Lord Bramwell for equitably adjusting the loss where a cheque has been over held, and the banker has failed in the interval. Formerly the drawer was discharged altogether from liability to the payee, and the payee had no claim for the amount of the cheque against the banker, even though the banker, after having time to realize his assets, paid twenty shillings in the pound. The effect of section 74 is to protect the drawer from any loss owing to the holder's delay, but to enable the dilatory holder to stand in the shoes of the drawer and get what he can out of the estate of the banker. Section 74 begins as follows :—"Subject to the provisions of this "Act: (1), Where a cheque is not presented for payment within a "reasonable time of its issue, and the drawer or the person on whose "account it is drawn had the right at the time of such presentment "as between him and the banker to have the cheque paid, and "suffers actual damage through the delay, he is discharged to the "extent of such damage, that is to say, to the extent to which such "drawer or person is a creditor of such banker to a larger amount "than he would have been if such cheque had been paid." Then sub-section (2), as we have seen, says how reasonable time is to be determined. And then we have this equitable provision introduced for tempering justice with mercy to the belated holder. (3), "The holder of such cheque as to which such holder or person "is discharged shall be a creditor in lieu of such drawer or person "of such banker to the extent of such discharge, and entitled to "recover the amount from him."

The wording of the first sub-section is rather difficult, but will, I think, become more intelligible if we look at it in this way :—

1. Suppose, at the date of the presentment, the drawer had in the hands of the bankers sufficient money to satisfy the cheque in full, then the banker's failure, and the consequent non-payment of the cheque, leave the drawer a creditor of the banker for a sum larger *by the whole amount of the cheque*, than he would have been had such cheque been paid.

2. Suppose, at the date of presentment, the drawer had in the hands of the banker only sufficient funds to pay say half the amount of the cheque. In this case the drawer is creditor of the banker for a larger sum *by half the amount of the cheque* than he would have been if the cheque had been paid on presentment.

3. Suppose, at the date of presentment, the drawer had nothing left in the hands of the banker at all. Here the drawer had not "the right at the time of such presentment as between him and the "banker to have the cheque paid," and, therefore, he does not suffer "actual damage through the delay." The non-payment of the cheque does not make the drawer a creditor of the banker for any amount whatever, because the drawer has had all his own money out of the bank, and the cheque could not have drawn any of the drawer's money out, however solvent the banker had been.

Now the joint effect of sub-sections (1) and (3) is that, to whatever extent the drawer is, by the delay and non-payment of the cheque, made a creditor of the banker to a larger amount than he could have been had such cheque been paid, to precisely this extent the drawer is discharged, and the holder becomes the creditor of the banker in lieu of the drawer. Apply this to each of the three supposed cases.

In the first supposed case the drawer is discharged to the full amount of the cheque, and the holder becomes creditor of the banker for that full amount. In the second case, the drawer would continue liable to the holder for half the amount, and be discharged to the extent of the other half, which would not have been left in the banker's hands if the holder had been more prompt in presenting the cheque. The holder would therefore

look to the drawer for one half, and take his chance with the other creditors of the banker for the other half of the amount of the cheque. In the third case the drawer has suffered no damage from the delay at all. He has had all his money back from the banker, and therefore, short of the period of limitations, he cannot set up the delay in presenting the cheque, and he is bound to pay the holder the amount he owes him. In other words, the drawer is is not discharged to any extent at all, and the holder therefore cannot become creditor of the bank to any extent whatever in lieu of him.

What determines bankers' authority, s. 75.

Section 75 declares that the duty and authority of a banker to pay a cheque are determined by:—

(*a*) Countermand of payment.

(*b*) Notice of the customer's death.

Observe, by the way, that it is notice of the death and not the death itself that terminates the authority to pay.

Other justifications for dishonouring cheque with funds in hand. Notice of Act of Bankruptcy.

There are other circumstances besides the two here mentioned, which would justify a banker in refusing to apply funds of his customer to the payment of his cheque. For example, if the banker had notice of that the customer had committed an available act of bankruptcy he would be so justified, and if, notwithstanding such notice, the banker honoured the cheque, the drawer's trustee in bankruptcy could come down upon him for the amount on behalf of the creditors generally.

Notice of Breach of Trust.

So again, if a banker was unmistakably aware that the drawing of the cheque was a breach of trust and that in honouring it he would be carrying out the breach of trust, he would probably be justified in refusing to honour the cheque, and certainly would if it was any part of the proposed arrangement that he should benefit by the transaction.

Gray *v.* Johnston.

Lord Cairns, as Lord Chancellor, in 1868, presided in the House of Lords, when the case of Gray *v.* Johnston came before it on appeal from the Court of Chancery, in Ireland. In the course of his judgment, he pointed out that a clear conception of the duty of a banker on this point was a matter of extreme importance both

to bankers and the whole community. "On the one hand," said his lordship, "it would be a most serious matter if bankers were "to be allowed on light and trifling grounds—on grounds of mere "suspicion or curiosity—to refuse to honour a cheque drawn by "their customer, even although that customer might happen to be "an administrator or an executor. On the other hand, it would be "equally of serious moment if bankers were to be allowed to shelter "themselves under that title and to say that they were at liberty "to become parties or privies to a breach of trust committed with "regard to trust property, and, looking to their position as bankers "merely, to insist that they were entitled to pay away money "which constituted a part of trust property at a time when they "knew it was going to be misapplied, and for the purpose of its "being so misapplied." And, referring to authorities which had been cited at the bar, he stated that, "the result of those authori-"ties is clearly this :—in order to hold a banker justified in refusing "to pay a demand of his customer, the customer being an executor "and drawing a cheque as an executor, there must in the first place "be some misapplication, some breach of trust intended by the "executor, and there must in the second place, as was said by Sir "John Leach in the well-known case of Keane *v.* Robarts, be "proof that the bankers are privy to the intent to make this mis-"application of the trust funds. And to that I think I may safely "add that if it be shown that any personal benefit to the bankers "themselves is designed or stipulated for, that circumstance, "above all others, will most readily establish the fact that the "bankers are in privity with the breach of trust which is about to "be committed "—L.R. 3 H.L., at p. 11.

Now here you will notice that Lord Cairns does not state that in order to *justify* the banker in refusing to honour the cheque, there need be anything more than a positive and distinct knowledge on the part of the banker that the money is to be drawn out for the purpose of being misapplied in breach of trust. And to go one step further, his lordship does not say that, in order to make the banker liable to make good the breach of trust if he does honour the cheque with such knowledge, it is essential that he should have

derived any personal advantage from the transaction. All his lordship says, is that "if the banker has derived such personal "advantage, that circumstance, above all others, will most readily "establish" his "privity with the breach of trust." Lord Westbury, however, after pointing out the duty of the banker to honour an order of his customer, and the impossibility of the banker setting up the rights of third parties against an order of his customer, proceeds thus :—"Supposing therefore, that the banker becomes "incidentally aware that the customer, being in a fiduciary or a "representative capacity, meditates a breach of trust and draws a "cheque for that purpose, the banker not being interested in the "transaction, has no right to refuse the payment of the cheque, for "if he did so, he would be making himself a party to an inquiry "as between his customer and third person." "He would be setting "up a supposed *jus tertii* as a reason why he should not perform his "own distinct obligation to his customer. But then it has been very "well settled that if an executor or a trustee, who is indebted to a "banker or to another person having the legal custody of the assets "of a trust estate, applies a portion of them in the payment of his own "debt to the individual having that custody, the individual receiving "the debt has at once not only abundant proof of the breach of "trust, but participates in it for his own personal benefit." *Id.* p. 14. So that Lord Westbury appears to recognize no half-way house between the absolute duty to honour the customer's order, and that personal participation by the banker in the benefit of the breach of trust, which would not only justify the banker in refusing to honour the cheque, but render him legally liable if he did not so refuse. Whereas Lord Cairns's rule would seem to be, that while the banker has no right whatever to pry officiously into his customer's motives or to raise difficulties on mere grounds of curiosity or suspicion, yet positive knowledge, that if he honoured the cheque he would be paying out money intended to be misapplied, in breach of trust, and for the purpose of its being so misapplied, would at all events *justify* the banker in refusing to honour the cheque and might render him liable to make good the amount to the person defrauded, while any personal

participation in the benefit of the breach of trust would not only justify the refusal but render the banker legally liable for not refusing.

Garnishee order.

Another justification for refusing to honour a cheque while there are funds of the customer sufficient to meet it, is what is called a garnishee order. In Rogers *v.* Whiteley (23 Q.B.D. 236), a case decided in the Court of Appeal in June, 1889, the defendant was a banker, and the plaintiff, Rogers, was one of his banking customers. Rogers had become liable, in litigation with a person named Holloway, to pay £6,000, and a garnishee order was made and served upon Whiteley attaching all money in his hands due to Rogers to answer this sum of £6,000. At this time there was a balance to Rogers's credit of £6,800, that is to say, £800 more than sufficient to satisfy the claim for £6,000. Rogers drew cheques on Whiteley for less altogether than £800, so that they might have been honoured without reducing the balance below what was sufficient to satisfy the amount mentioned in the garnishee order. Whiteley, however, dishonoured the cheques, and when Rogers complained, he pointed to the words of the garnishee order, which attached "all debts owing or accruing" from the garnishee (the banker) to the judgment debtor (Rogers) to answer the judgment obtained by Holloway against Rogers. The Court held that though the banker might have honoured the cheques and taken the risk on the strength of the balance being £800 beyond the sum of £6,000 mentioned in the garnishee order, yet he was not bound to run any risk and was quite justified, if the Court ordered him to hold all the monies to answer the judgment debt of £6,000 in standing by the letter of the order, until it was discharged or varied by the Court itself. So much for the provisions relating to cheques on a banker generally.

Rogers *v.* Whiteley

Present provisions as to Crossed Cheques.

The remaining sections under the head of cheques on a banker are those devoted to crossed cheques, sections 76 to 82. These now embody those provisions the history of which we have carefully followed from the origin of crossings in the clearing house to their adoption by the public and thence through the legal decisions and legislative measures, commencing with the case of Bellamy and

Majoribanks, and ending with the Crossed Cheques Act of 1876, and their final adoption and consolidation into the codified form in which they appear in the sections now before us.

Ss. 76, 77, 78, 79.

Section 76 tells us what amounts to a crossing, section 77 who may cross, section 78 declares crossing a material part of the cheque and prohibits obliteration, addition or alteration, section 79 gives us the duties of the banker as to crossed cheques, and makes him liable to the true owner for payment in disregard of such duties. Then come *three protections to bankers*. The *first* is that in the proviso to section 79, in favour of a banker paying in good faith and without negligence on a cheque with a non-apparently obliterated crossing or a non-apparent addition or alteration. In this proviso, which was copied almost word for word from section 11 of the Act of 1876, which, in its turn, originated in section 4 of the Act of 1858, I think the words "to have been" are redundant before the words "added to or altered otherwise than as authorised by this Act." The presence of those words, you will see, makes the addition and alteration extend to the cheque bodily, whereas, I think, they apply only to the crossing as in section 78.

Three protections to Bankers.

S. 79 proviso.

Ss. 80, 82.

The *second* protection is that in section 80 in favour of a banker paying, in good faith and without negligence, upon a crossed cheque, and in accordance with the crossing. The *third* protection is that in section 82 in favour of a collecting banker, in good faith and without negligence, receiving payment for a customer of a cheque crossed generally, or specially crossed to himself.

S. 81.

Not negotiable.

And between these two last-mentioned sections comes the important section 81, which is in these terms: "Where a person "takes a crossed cheque which bears on it the words 'not "negotiable,' he shall not have and shall not be capable of giving "a better title to the cheque than that which the person from "whom he took it had."

I hope and believe that those words have now for all of us a significance which perhaps they had not at our first gathering Since then we have traced out the full meaning of negotiability, and compared it with the limited sense in which it is used in the provisions relating to the transfer of bills. We have also followed

the various steps in that controversy over crossed cheques which resulted in the adoption of the words "not negotiable" as part of the crossing to indicate that, while the transferability was left intact, there was to be no indefeasible title created merely by honest acquisition for value. Under the Crossed Cheques Act, 1876, the provisions as to crossed cheques were made applicable to dividend warrants of the Bank of England and the Bank of Ireland. The Act of 1882 by section 95, extends the provisions as to crossed cheques to dividend warrants generally.

Crossed Dividend Warrants.

Our studies have been necessarily limited by the time at our disposal. But if the few hours we have passed together have put you in possession of some practical points of banking in relation to Bills of Exchange, or placed before you with more distinctness, in their legal aspects, the duties and protections of a banker, and encouraged you to study such matters by the light of history and principle, those hours will not have been mis-spent.

Conclusion.

In parting, let me remind you that the Parish Councils will shortly be established amongst us. When their cheques are presented you will do well, before honouring them, to see that they are signed by two members of the Council.

Parish Council cheques.

THE

BILLS OF EXCHANGE ACT, 1882.

[45 & 46 Vict. c. 61.]

THE BILLS OF EXCHANGE ACT, 1882.*

[45 & 46 Vict. c. 61.]

An Act to codify the Law relating to Bills of Exchange, Cheques, and Promissory Notes. [18th August, 1882.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows : 45 & 46 Vict. c. 61.

PART I.

Preliminary.

1. This Act may be cited as the Bills of Exchange Act, 1882. Short title.

2. In this Act, unless the context otherwise requires,— Interpretation of terms.

"Acceptance" means an acceptance completed by delivery or notification. (II, *50*, *51*.)

"Action" includes counter-claim and set-off.

"Banker" includes a body of persons whether incorporated or not who carry on the business of banking. (II, *51*.)

"Bankrupt" includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another. (II, *52*. II, *75*. III, *78*.)

"Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Issue" means the first delivery of a bill or note, complete in form to a person who takes it as a holder. (II, *52*.)

"Person" includes a body of persons whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

* N.B.—In the references to the text, the roman figures refer to the lecture, the other figures to the page. It is hoped that by this method a ready recourse may be provided to the analytical Table of Contents, where the place of each section, in the general scheme of the Lectures, may be more easily seen.

PART II.

BILLS OF EXCHANGE.

Form and Interpretation.

Bill of exchange defined.

3. (1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer. (II, *55.*)

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange. (II, *62.*)

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (*a*) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or (*b*) a statement of the transaction which gives rise to the bill, is unconditional. (II, *56.*)

(4) A bill is not invalid by reason—

(*a*) That it is not dated; (II, *55.*)

(*b*) That it does not specify the value given, or that any value has been given therefor; (II, *55.*)

(*c*) That it does not specify the place where it is drawn or the place where it is payable. (II, *55.*)

Inland and foreign bills.

4. (1) An inland bill is a bill which is or on the face of it purports to be (*a*) both drawn and payable within the British Islands, or (*b*) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill. (II, *55.*)

For the purposes of this act "British Islands" mean any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney and Sark, and the islands adjacent to any of them being part of the dominions of her Majesty.

(2) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

Effect where different parties to bill are the same person.

5. (1) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee. (II, *55.*)

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note. (II, *56.*)

Address to drawee

6. (1) The drawee must be named or otherwise indicated in a bill with reasonable certainty. (II, *56.*)

(2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange. (II, *57.*)

Certainty required as to payee.

7. (1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty. (II, *56*, *62*, *63.*)

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being. (II, *56*, *62*.)

(3) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer. (II, *56*, *65*.)

What bills are negotiable.

8. (1) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable. (II, *56*, *65*, *67*.)

(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank. (II, *54*, *55*, *67*. III, *107*.)

(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable. (II, *56*, *62*.)

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option. (II, *54*, *55*, *62*.)

Sum payable.

9. (1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(*a*) With interest. (II, *55*, *60*.)

(*b*) By stated instalments. (II, *55*, *62*.)

(*c*) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due. (II, *55*, *62*.)

(*d*) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill. (II, *55*, *62*.)

(2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable. (II, *55*, *62*.)

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof. (II, *52*, *55*, *60*.)

Bill payable on demand.

10. (1) A bill is payable on demand—

(*a*) Which is expressed to be payable on demand, or at sight, or on presentation; or

(*b*) In which no time for payment is expressed. (II, *55*, *57*.)

(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand. (II, *54*, *55*, *72*.)

Bill payable at a future time.

11. A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable—

(1) At a fixed period after date or sight.

(2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect. (II, *56*, *57*.)

Omission of date in bill payable after date.

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly. (II, *52*, *56*. *57*.)

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

Ante-dating and post-dating.

13. (1) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be. (I, *41*. II, *54*, *55*, *57*.)

(2) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday. (II, *55*.)

Computation of time of payment.

14. Where a bill is not payable on demand, the day on which it falls due is determined as follows: (II, *55*, *57*, *58*, *59*, *60*.)

(1) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that—

(*a*) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by royal proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day;

34 & 35 Vict. c. 17.

(*b*) When the last day of grace is a bank holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a Bank Holiday, the bill is due and payable on the succeeding business day.

(2) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

(3) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.

(4) The term "month" in a bill means calendar month. (II, *60*.)

Case of need.

15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit. (II, *54*, *68*.)

Optional stipulations by drawer or indorser.

16. The drawer of a bill, and any indorser, may insert therein an express stipulation—

(1) Negativing or limiting his own liability to the holder:

(2) Waiving as regards himself some or all of the holder's duties. (II, *54*, *69*. III, *80*.)

17. (1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. (II, *50*, *54*.) Definition and requisites of acceptance.

(2) An acceptance is invalid unless it complies with the following conditions, namely :

(*a*) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient. (II, *69*, *72*.)

(*b*) It must not express that the drawee will perform his promise by any other means than the payment of money. (II, *72*.)

18. A bill may be accepted— Time for acceptance.

(1) Before it has been signed by the drawer, or while otherwise incomplete :

(2) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment :

(3) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance. (II, *72*.)

19. (1) An acceptance is either (*a*) general or (*b*) qualified. General and qualified acceptances.

(2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

(*a*) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated :

(*b*) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn :

(*c*) local, that is to say, an acceptance to pay only at a particular specified place :

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere :

(*d*) qualified as to time :

(*e*) the acceptance of some one or more of the drawees, but not of all. (II, *72*, *73*.)

20. (1) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a primâ facie authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser ; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a primâ facie authority to fill up the omission in any way he thinks fit. (I, *41*, *42*, *45*. II, *53*, *54*, *74*.) Incohate instruments.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact. (I, *42*.)

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given. (I, *42.*)

Delivery.

21. (1) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's is incomplete and revocable, until delivery of the instrument in order to give effect thereto. (II, *50*, *54*, *74*. III, *78*.)

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable. (III, *50*.)

(2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(*a*) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be.

(*b*) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed, (I, *42*. II, *74*. III, *78*, *79*.)

(3) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved. (I, *42*, *43*. II, *74*. III, *79*.)

Capacity and Authority of Parties.

Capacity of parties.

22. (1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations. (I, *31*.)

(2) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto. (I, *30*, *36*.)

Signature essential to liability.

23. No person is liable as drawer, indorser or acceptor of a bill who has not signed it as such : Provided that

(1) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name :

(2) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm. (I, *33*.)

Forged or unauthorised signature.

24. Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery, or want of authority. (I, *33*, *35*, *36*. III, *96*.)

Provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery.

Procuration signatures.

25. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority. (I, *34.*)

Person signing as agent or in representative capacity.

26. (1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon ; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability. (I, *35.* III, *86.*)

(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted. (I, *43.*)

The Consideration for a Bill.

Value and holder for value.

27. (1) Valuable consideration for a bill may be constituted by,—

(*a*) Any consideration sufficient to support a simple contract ;

(*b*) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who become parties prior to such time. (I, *23*, *24*, *25*, *26*.)

(3) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

Accommodation bill or party.

28. (1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor. or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. (I, *26.*)

(2) An accommodation party is liable on the bill to a holder for value ; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not. (I, *23*, *24*, *25*, *26*.)

Holder in due course.

29. (1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely :—

(*a*) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact. (I, *45.*)

(*b*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular the title of a person who negotiates a bill is defective within the meaning of this act when he obtained the bill, or the acceptance thereof, by fraud, durass, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due

course as regards the acceptor and all parties to the bill prior to that holder. (I, *23*, *24*, *25*, *26*.)

Presumption of value and good faith.

30. (1) Every party whose signature appears on a bill is primâ facie deemed to have become a party thereto for value. (I, *43*.)

(2) Every holder of a bill is primâ facie deemed to be a holder in due course: but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill. (I, *22*, *23*, *24*, *25*. *26*, *43*. II. *52*.)

Negotiation of Bills.

Negotiation of bill.

31. (1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery. (III, *77*, *78*.)

(4) Where the holder of a bill payable to his order transfers it for value, without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor. (I, *26*. III, *85*, *86*.)

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability. (III, *86*, *87*.)

Requisites of a valid indorsement.

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely:—

(1) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient. (III, 87.)

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognised, is deemed to be written on the bill itself.

(2) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill. (III, *87*.)

(3) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others. (III, *87*.)

(4) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is mis-spelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature. (III, *88*, *89*, *102*, *103*.)

(5) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved. (I, *43*.)

(6) An indorsement may be made in blank or special. It may also contain terms making it restrictive. (III, *89*.)

Conditional indorsement.

33. Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not. (III, *89*.)

34. (1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer. (III, *89.*) Indorsement in blank and special indorsement.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

35. (1) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D. only," or "Pay D. for the account of X.," or "Pay D. or order for collection." (II, *66.* III, *89.*) Restrictive indorsement.

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorise him to do so. (II, *66.* III, *89.*)

(3) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement. (II, *66.* III, *90.*)

36. (1) Where a bill is negotiable in its origin it continues to be negotiable until it has been (*a*) restrictively indorsed or (*b*) discharged by payment or otherwise. (III, *90*, *91.*) Negotiation of overdue or dishonoured bill.

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had. (I, *46.*)

(3) A bill payable on demand is deemed to be overdue within the meaning and for the purposes, of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact. (I, *46*, *48.* III, *90*, *91.*)

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is primâ facie deemed to have been effected before the bill was overdue. (I, *43.* III, *90.*)

(5) Where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this sub-section shall affect the rights of a holder in due course. (III, *91.*)

37. Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable. (III, *91*, *92.*) Negotiation of bill to party already liable thereon.

38. The rights and powers of the holder of a bill are as follows:— Rights of the holder.

(1) He may sue on the bill in his own name:

(2) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences

available to prior parties among themselves, and may enforce payment against all parties liable on the bill:

(3) Where his title is defective (*a*) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (*b*) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

General Duties of the Holder.

When presentment for acceptance is necessary.

39. (1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee it must be presented for acceptance before it can be presented for payment.

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill. (I, *39.*)

(4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

Time for presenting bill payable after sight.

40. (1) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time. (I, *46.*)

(2) If he do not do so, the drawer and all indorsers prior to that holder are discharged. (I, *39*, *46.*)

(3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case. (I, *46.*)

Rules as to presentment for acceptance, and excuses for non-presentment.

41. (1) A bill is duly presented for acceptance which is presented in accordance with the following rules:

(*a*) The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue:

(*b*) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only: (III, *87*, *88.*)

(*c*) Where the drawee is dead presentment may be made to his personal representative:

(*d*) Where the drawee is bankrupt, presentment may be made to him or to his trustee:

(*e*) Where authorized by agreement or usage, a presentment through the post office is sufficient:

(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

(*a*) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill:

(*b*) Where, after the exercise of reasonable diligence, such presentment cannot be effected :

(*c*) Where, although the presentment has been irregular, acceptance has been refused on some other ground.

(3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

Non-acceptance.

42. (1) When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

Dishonour by non-acceptance and its consequences.

43. (1) A bill is dishonoured by non-acceptance—

(*a*) When it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained : or

(*b*) When presentment for acceptance is excused and the bill is not accepted.

(2) Subject to the provisions of this Act when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

Duties as to qualified acceptances.

44. (1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance. (II, *73.*)

(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill. (II, *73.*)

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto. (II, *73.*)

Rules as to presentment for payment.

45. Subject to the provisions of this Act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged. (I, *39.*)

A bill is duly presented for payment which is presented in accordance with the following rules :—

(1) Where the bill is not payable on demand, presentment must be made on the day it falls due.

(2) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable. (I, *47.*)

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

(3) Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to

pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.

(4) A bill is presented at the proper place :—

(*a*) Where a place of payment is specified in the bill and the bill is there presented. (II, *73.*)

(*b*) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.

(*c*) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known.

(*d*) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.

(5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.

(6) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all. (III, *88.*)

(7) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

(8) Where authorised by agreement or usage a presentment through the post office is sufficient.

Excuses for delay or non-presentment for payment.

46. (1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with,—

(*a*) Where after the exercise of reasonable diligence presentment, as required by this Act cannot be effected.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

(*b*) Where the drawee is a fictitious person.

(*c*) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

(*d*) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.

(*e*) By waiver of presentment, express or implied.

Dishonour by non-payment.

47. (1) A bill is dishonoured by non-payment (*a*) when it is duly presented for payment and payment is refused or cannot be obtained, or (*b*) when presentment is excused and the bill is overdue and unpaid.

(2) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

Notice of dishonour and effect of non-notice.

48. Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; (I, *39*), provided that—

(1) When a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.

(2) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

Rules as to notice of dishonour.

49. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules (I, *39*):—

(1) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

(2) Notice of dishonour may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

(3) Where the notice is given by or on behalf of the holder, it ensures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(4) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it ensures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.

(6) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

(7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

(8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.

(9) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

(10) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.

(11) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others. (III, *88*.)

(12) The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter. (I, *47*.)

In the absence of special circumstances, notice is not deemed to have been given within a reasonable time, unless—

(*a*) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.

(*b*) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.

(13) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder.

(14) Where a party to a bill receives due notice of dishonour, he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

(15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

Excuses for non-notice and delay.

50. (1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

(2) Notice of dishonour is dispensed with—

(*a*) When, after the exercise of reasonable diligence, notice as required by this act cannot be given to or does not reach the drawer or indorser sought to be charged.

(*b*) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice.

(*c*) As regards the drawer in the following cases, namely : (1) where drawer and drawee are the same person ; (2) where the drawee is a fictitious person or a person not having capacity to contract ; (3) where the drawer is the person to whom the bill is presented for payment ; (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill ; (5) where the drawer has countermanded payment.

(*d*) As regards the indorser in the following cases, namely : (1) where the drawer is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill ; (2) where the indorser is the person to whom the bill is presented for payment ; (3) where the bill was accepted or made for his accommodation.

Noting or protest of bill.

51. (1) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be, but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

(2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-accept-

ance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary. (I, *39.*)

(3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4) Subject to the provisions of this Act, when a bill is noted or protested, it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(5) Where the acceptor of a bill becomes bankrupt or insolvent, or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(6) A bill must be protested at the place where it is dishonoured: Provided that—

(*a*) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day:

(*b*) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(*a*) The person at whose request the bill is protested:

(*b*) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence. (I, *39.*)

Duties of holder as regards drawee or acceptor.

52. (1) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable. (II, *73.*)

(2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures. (II, *73.*)

(3) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.

(4) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Funds in hands of drawee.

53. (1) A bill of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This sub-section does not extend to Scotland.

(2) In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.

Liability of acceptor.

54. The acceptor of a bill, by accepting it—

(1) Engages that he will pay it according to the tenor of his acceptance: (II, *74.*)

(2) Is precluded from denying to a holder in due course: (I, *36*, *37.*)

(*a*) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;

(*b*) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(*c*) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

Liability of drawer or indorser.

55. (1) The drawer of a bill by drawing it—

(*a*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken; (II, *69.*)

(*b*) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse. (I, *36*, *37.*)

(2) The indorser of a bill by indorsing it—

(*a*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken; (III, *95.*)

(*b*) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements; (I, *36*, *37.*)

(*c*) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto. (I, *36*, *37.*)

Stranger signing bill liable as indorser.

56. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course. (III, *83.*)

Measure of damages against parties to dishonoured bill.

57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:—

(1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill

may recover from the acceptor or from the drawer, or from a prior indorser—

(*a*) The amount of the bill:

(*b*) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case:

(*c*) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.

(2) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

(3) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper. (II, *61.*)

Transferor by delivery and transferee.

58. (1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery." (I, *26.* III, *80, 81, 82, 83.*)

(2) A transferor by delivery is not liable on the instrument. (I, *26.* III, *80.*)

(3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless. (I, *26, 36, 37.* III, *80.*)

Discharge of Bill.

Payment in due course.

59. (1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor. (I, *40.* III, *93.*)

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(2) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged; but—

(*a*) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill. (III, *93.*)

(*b*) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill. (III, *93.*)

(3) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged. (I, *27, 28, 40.*)

Banker paying demand draft whereon indorsement is forged.

60. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it

purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority. (I, *35*. III, *96*. IV, *114*.)

Acceptor the holder at maturity.

61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged. (III, *93*.)

Express waiver.

62. (1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged. (III, *93*.)

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

Cancellation.

63. (1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged. (III, *93*.)

(2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged. (I, *40*.)

(3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative: but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority. (I, *43*.)

Alteration of bill.

64. (1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers. (III, *93*.)

Provided that,

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(2) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent. (II, *53*.)

Acceptance and Payment for Honour.

Acceptance for honour supra protest.

65. (1) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3) An acceptance for honour supra protest in order to be valid must—

(*a*) be written on the bill, and indicate that it is an acceptance for honour:

(*b*) be signed by the acceptor for honour.

(4) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer. (I, *41.*)

(5) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

Liability of acceptor for honour.

66. (1) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

Present-ment to acceptor for honour.

67. (1) Where a dishonoured bill has been accepted for honour supra protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

Payment for honour supra protest.

68. (1) Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference. (I, *41.*)

(3) Payment for honour supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.

(4) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive

both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

(7) Where the holder of a bill refuses to receive payment supra protest he shall lose his right of recourse against any party who would have been discharged by such payment.

Lost Instruments.

Holder's right to duplicate of lost bill.

69. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

Action on lost bill.

70. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

Bill in a set.

Rules as to sets.

71. (1) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(2) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Conflict of Laws.

Rules where laws conflict.

72. Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto, are determined as follows:

(1) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or accept-

ance supra protest, is determined by the law of the place where such contract was made. (II, *52.*)

Provided that—

(*a*) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue : (II, *52*, *53.*)

(*b*) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom. (II, *52*, *53.*)

(2) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance supra protest of a bill, is determined by the law of the place where such contract is made.

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of the United Kingdom.

(3) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

(4) Where a bill is drawn out of but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

(5) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

PART III.

Cheques on a Banker.

Cheque defined.

73. A cheque is a bill of exchange drawn on a banker payable on demand. (IV, *136.*)

Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

Presentment of cheque for payment.

74. Subject to the provisions of this Act—

(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid. (IV, *136*, *137.*)

(2) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case. (I, *47.*)

(3) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him. (IV, *136*, *137.*)

Revocation of banker's authority.

75. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

(1) Countermand of payment. (IV, *138.*)

(2) Notice of the customer's death. (IV, *138.*)

Crossed Cheques.

General and special crossings defined.

76. (1) Where a cheque bears across its face an addition of—

(*a*) The words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or

(*b*) Two parallel transverse lines simply, either with or without the words "not negotiable";

that addition constitutes a crossing, and the cheque is crossed generally. (IV, *131.*)

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker. (IV, *131, 142.*)

Crossing by drawer or after issue.

77. (1) A cheque may be crossed generally or specially by the drawer. (IV, *131, 142.*)

(2) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3) Where a cheque is crossed generally the holder may cross it specially.

(4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself. (IV, *142.*)

Crossing a material part of cheque.

78. A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing. (IV, *142.*)

Duties of banker as to crossed cheques.

79. (1) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof. (IV, *142.*)

(2) Where the banker on whom the cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid. (IV, *142.*)

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having

been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be. (IV, *115*, *116*, *142*.)

Protection to banker and drawer where cheque is crossed.

80. Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof. (IV, *142*.)

Effect of crossing on holder.

81. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had. (I, *21*. IV, *128*, *142*.)

Protection to collecting banker.

82. Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment. (IV, *142*.)

PART IV.

Promissory Notes.

Promissory note defined.

83. (1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4) A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note.

Delivery necessary.

84. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

Joint and several notes.

85. (1) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenour.

(2) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

Note payable on demand.

86. (1) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged. (I, *47*.)

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case. (I, *47*.)

(3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue. (I, *48.*)

Presentment of note for payment.

87. (1) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

Liability of maker.

88. The maker of a promissory note by making it—

(1) Engages that he will pay it according to its tenour; (I, *38.*)

(2) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse. (I, *36*, *38.*)

Application of Part II. to notes.

89. (1) Subject to the provisions in this Part and, except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes; namely, provisions relating to—

(*a*) Presentment for acceptance;

(*b*) Acceptance;

(*c*) Acceptance supra protest;

(*d*) Bills in a set.

(4) Where a foreign note is dishonoured, protest thereof is unnecessary.

PART V.

Supplementary.

Good faith.

90. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.

Signature.

91. (1) Where by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority. (I, *33.*)

(2) In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal. (I, *31.* III, *105.*)

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal. (I, *31.*)

92. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded. Computation of time.

"Non-business days" for the purposes of this Act mean—

(*a*) Sunday, Good Friday, Christmas Day.

(*b*) A bank holiday under the Bank Holidays Act, 1871, or Acts amending it;

(*c*) A day appointed by royal proclamation as a public fast or thanksgiving day.

Any other day is a business day.

93. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting. When noting equivalent to protest.

94. Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill. Protest when notary not accessible.

The form given in Schedule I to this Act may be used with necessary modifications, and if used shall be sufficient.

95. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend. (IV, *143.*) Dividend warrants may be crossed.

96. The enactments mentioned in the second schedule to this Act are hereby repealed as from the commencement of this Act to the extent in that schedule mentioned. Repeal.

Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title or interest.

97. (1) The rules in bankruptcy relating to bills of exchange, promissory notes and cheques, shall continue to apply thereto notwithstanding anything in this Act contained. Savings.

(2) The rules of common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes and cheques.

(3) Nothing in this Act or in any repeal effected thereby shall affect—

(*a*) The provisions of the Stamp Act, 1870, or Acts amending it, or any law or enactment for the time being in force relating to the revenue. 33 & 34 Vict. c. 97.

(*b*) The provisions of the Companies Act, 1862, or Acts amending it, or any Act relating to joint stock banks or companies. 25 & 26 Vict. c. 89.

(*c*) The provisions of any Act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively.

(*d*) The validity of any usage relating to dividend warrants, or the indorsements thereof. (III, *97.*)

Saving of summary diligence in Scotland.

98. Nothing in this Act or in any repeal effected thereby shall extend or restrict, or in any way alter or affect the law and practice in Scotland in regard to summary diligence.

Construction with other Acts, &c.

99. Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act.

Parole evidence allowed in certain judicial proceedings in Scotland.

100. In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parole evidence: Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenor of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or suspension of a charge, or threatened charge, to make such consignation, or to find such caution as the court or judge before whom the cause is depending may require.

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription.

SCHEDULES.

FIRST SCHEDULE.

Section 94.

Form of Protest which may be used when the services of a notary cannot be obtained.

Know all men that I, *A. B.* [*householder*], of in the county of , in the United Kingdom, at the request of *C. D.*, there being no notary public available, did on the day of 188 at demand payment [*or* acceptance] of the bill of exchange hereunder written, from *E. F.*, to which demand he made answer [*state answer, if any*] wherefore I now, in the presence of *G. H.* and *J. K.* do protest the said bill of exchange.

(Signed) *A. B.*
G. H. } Witnesses.
J. K. }

N.B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title of Act and extent of Repeal.
9 Will. 3, c. 17	An Act for the better payment of inland bills of exchange.
3 & 4 Anne, c. 8	An Act for giving like remedy upon promissory notes as is now used upon bills of exchange, and for the better payment of inland bills of exchange.
17 Geo. 3, c. 30	An Act for further restraining the negotiation of promissory notes and inland bills of exchange under a limited sum within that part of Great Britain called England.
39 & 40 Geo. 3, c. 42 ...	An Act for the better observance of Good Friday in certain cases therein mentioned.
48 Geo. 3, c. 88	An Act to restrain the negotiation of promissory notes and inland bills of exchange under a limited sum in England.
1 & 2 Geo. 4, c. 78	An Act to regulate acceptances of bills of exchange.
7 & 8 Geo. 4, c. 15	An Act for declaring the law in relation to bills of exchange and promissory notes becoming payable on Good Friday or Christmas Day.
9 Geo. 4, c. 24	An Act to repeal certain acts, and to consolidate and amend the laws relating to bills of exchange and promissory notes in Ireland, in part; that is to say, Section two, four, seven, eight, nine, ten, eleven.
2 & 3 Will. 4, c. 98	An Act for regulating the protesting for non-payment of bills of exchange drawn payable at a place not being the place of the residence of the drawee or drawees of the same.
6 & 7 Will. 4, c. 58 ...	An Act for declaring the law as to the day on which it is requisite to present for payment to acceptor, or acceptors supra protest for honour, or to the referee or referees, in case of need, bills of exchange which have been dishonoured.

Session and Chapter.	Title of Act and extent of Repeal.
8 & 9 Vict. c. 37 ..... in part	An Act to regulate the issue of bank notes in Ireland, and to regulate the repayment of certain sums advanced by the Governor and Company of the Bank of Ireland for the public service, in part; that is to say, Section twenty-four.
19 & 20 Vict. c. 97 ..... in part	The Mercantile Law Amendment Act, 1856, in part; that is to say, Sections six and seven.
23 & 24 Vict. c. 111..... in part	An Act for granting to Her Majesty certain duties of stamps, and to amend the laws relating to the stamp duties, in part; that is to say, Section nineteen.
34 & 35 Vict. c. 74	An Act to abolish days of grace in the case of bills of exchange and promissory notes payable at sight or on presentation.
39 & 40 Vict. c. 81	The Crossed Cheques Act, 1876.
41 & 42 Vict. c. 13	The Bills of Exchange Act, 1878.
ENACTMENT REPEALED AS TO SCOTLAND.	
19 & 20 Vict. c. 60 ..... in part	The Mercantile Law (Scotland) Amendment Act, 1856, in part; that is to say, Sections ten, eleven, twelve, thirteen, fourteen, fifteen and sixteen.